



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair

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Arnold
Schwarzenegger
Governor

16 July 2009

Mr. Del Rapini
Del Rapini Construction, Inc.
28555 Rollins Lake Road
Colfax, CA 95713

CERTIFIED MAIL
7006 2150 0000 7132 0107

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0554, DEL RAPINI CONSTRUCTION INC, PINE GROVE BLUFFS, AMADOR COUNTY

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (CWC) section 13385. The Complaint charges Del Rapini Construction, Inc. (Discharger) with civil liability in the amount of **one hundred and fifty-four thousand and five hundred dollars (\$154,500)** for violations of the NPDES General Permit for Storm Water Discharges Associated with Construction Activities, NPDES No. CAS000002, Order No. 99-08-DWQ. The permit violations occurred at the Pine Grove Bluffs construction site in Amador County.

Pursuant to CWC section 13323, the Discharger may:

- Pay the assessed civil liability and waive its right to a hearing before the Central Valley Water Board by signing the enclosed waiver (checking off the box next to item #4) and submitting it to this office by **17 August 2009**, along with payment for the full amount;
- Agree to enter into settlement discussions with the Central Valley Water Board and request that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and submitting both the waiver and a letter describing the issues to be discussed to this office by **17 August 2009**; or
- Contest the Complaint and/or enter into settlement discussions with the Central Valley Water Board without signing the enclosed waiver.

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations in the Complaint. This settlement will be considered final pending a 30-day comment period, starting from the date of this Complaint, during which time interested parties may comment on this proposed settlement by submitting information to this office, attention Sue McConnell. Should the Central Valley Water Board receive 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. 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.

California Environmental Protection Agency

If the Central Valley Water Board does not receive a signed waiver by **17 August 2009**, then a hearing will be scheduled for **7/8/9 October 2009** Central Valley Water Board meeting in Rancho Cordova. The Central Valley Water Board's Prosecution Team has proposed the enclosed draft Hearing Procedures to govern the conduct of the hearing. Any objections to these draft Hearing Procedures must be received by Lori Okun, whose contact information is listed in the enclosed draft Hearing procedures, by **5 p.m. on 27 July 2009**.

Any comments or evidence concerning the enclosed Complaint must be submitted in accordance with the deadlines contained in the enclosed draft Hearing Procedures, unless these deadlines are changed by the Central Valley Water Board's Adjudicatory Team, either on their own accord or upon request.

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

Copies of these documents can also be obtained by contacting the Central Valley Water Board's office at 11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114, weekdays between 8:00 a.m. and 5:00 p.m.

For your information, we have attached a description of the factors that were considered, pursuant to California Water Code section 13385, in assessing this civil liability. If you have any questions regarding the enclosed Complaint, please contact Rich Muhl at (916) 464-4749 or Sue McConnell at (916) 464-4798.

WENDY WYELS
Environmental Program Manager
Compliance and Enforcement Section

Enc: Administrative Civil Liability Complaint No. R5-2009-0554
Hearing Waiver
CWC Factors Considered in Assessing Liability
Draft Hearing Procedures

cc w/o encl: Mr. Eugene Bromley, U.S. EPA, Region IX, San Francisco
Mr. Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Ms. Lori Okun, Office of Chief Counsel, SWRCB, Sacramento
Ms. Emel Wadhvani, Office of Chief Counsel, SWRCB, Sacramento
Mr. Reed Sato, Enforcement Unit, SWRCB, Sacramento
Mr. Ken Landau, Central Valley Water Board, Rancho Cordova
Ms. Carol Oz, California Department of Fish and Game, Rancho Cordova
Mr. Patrick Halvorsen, Contractors State License Board, Sacramento
Mr. Martin Price, Amador County Public Works, Jackson
Mr. Bill Jennings, California Sport Fishing Protection Alliance, Stockton

Mr. Del Rapini
Del Rapini Construction Inc.

16 July 2009

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0554
IN THE MATTER OF
DEL RAPINI CONSTRUCTION, INC
PINE GROVE BLUFFS
AMADOR COUNTY

This complaint is issued to Del Rapini Construction, Inc. (hereafter Discharger), pursuant to California Water Code (CWC) section 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 the Discharger violated the terms of National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity Order No. 99-08-DWQ (General Permit).

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

Background

1. The Discharger is the owner and developer of Pine Grove Bluffs, a 30-acre construction project located at the intersection of Ridge Road and Highway 88 west of Pine Grove in Amador County. The project includes both residential and commercial development. The commercial development involves about 12 acres of the project. Runoff from the commercial portion of the project site discharges into Jackson Creek. During the 2008/2009 wet season, storm water management problems were limited to the commercial portion of the property.
2. On 19 August 1999, the State Water Resources Control Board adopted the General Permit, which implements Waste Discharge Requirements for storm water discharges associated with construction activity.
3. The General Permit requires those who discharge storm water associated with construction activity to file a Notice of Intent to obtain coverage under the General Permit, and use best available technology economically achievable and best conventional control technology to reduce storm water pollution.
4. The CWC requires that dischargers obtain coverage under the General Permit prior to commencing construction activities. The Discharger obtained coverage under the General Permit and was assigned WDID No. 5S03C337319 on 27 September 2005.

Violation Chronology

5. On 26 February 2007, Central Valley Water Board staff inspected the Pine Grove Bluffs construction project and observed numerous storm water management problems. Board

staff observed a significant amount of erosion on many of the graded roadways throughout the project and observed a sediment-laden discharge into one of the storm drain inlets. Board staff provided a verbal warning to the Discharger and explained that the Best Management Practices (hereafter BMPs, which consist of water control devices that prevent pollution runoff from non-point sources, such as construction sites) throughout the project needed to be upgraded for the site to be in compliance with the General Permit. Photographs from the 26 February inspection are included as Attachment A to this Complaint.

6. On 20 October 2008, Board staff inspected the project at the beginning of the rainy season and observed active grading underway on the commercial portion of the development. Board staff also noted steep slopes on-site and the close proximity of the project to nearby surface waters. Only a few perimeter control BMPs were observed during the site inspection, and there were no effective erosion control BMPs at the site as required by the General Permit. Board staff talked to the Discharger about the condition of the project. Board staff explained that the site lacked an effective combination of erosion and sediment control BMPs as required by the General Permit, and requested that the Discharger implement additional BMPs to come into compliance. Photographs from the 20 October inspection are included as Attachment B to this Complaint.
7. On 22 December 2008, staff re-inspected the commercial portion of the development and observed significant storm water management problems. The problems included large graded areas with minimal erosion control, poorly installed and maintained sediment control BMPs, poorly protected drain inlets, rilling on slopes, and slope failures that resulted in sediment deposition in a concrete-lined ditch. Also, significant erosion was observed throughout the project. Board staff walked the site with the Discharger, identified the storm water management problems, and requested that the Discharger implement additional BMPs to come into compliance. The Discharger seemed to understand the concerns of Board staff and told them that he would work on stabilizing the site. Photographs from the 22 December inspection are included as Attachment C to this Complaint.
8. On 13 January 2009, Central Valley Water Board and Amador County staff inspected the commercial portion of the development and observed that the Discharger had installed some additional BMPs; however, staff again identified significant storm water management problems throughout the project. The problems included large graded areas with minimal erosion control, steep slopes, poorly installed and maintained sediment control BMPs, and poorly protected drain inlets. Board and Amador County staff walked the entire site with the Discharger, identified on-site storm water management problems, and recommended that the Discharger hire a consultant to help better stabilize the site. Photographs from the 13 January inspection are included as Attachment D to this Complaint.
9. On 24 January 2009, Board staff re-inspected the commercial portion of the development and again observed significant storm water management problems. These problems included large graded areas with steep slopes with very minimal erosion control BMPs,

poorly installed and maintained sediment control BMPs, poorly protected drain inlets and BMPs overwhelmed by very turbid storm water. Sediment-laden storm water was also observed discharging from the project into Jackson Creek at two locations. Photographs from the 24 January inspection are included as Attachment E to this Complaint.

10. On 2 February 2009, Board staff issued a Notice of Violation to the Discharger for the violations observed during the 24 January 2009 inspection. This Notice is included as Attachment F to this Complaint.
11. On 11 February 2009, the Discharger responded to the Notice of Violation stating that although he objected to the Notice, he would comply in all ways possible. The Discharger also submitted a very brief plan and inspection reports. The inspection reports stated that the Discharger installed BMPs in selected areas of the project.
12. On 17 February 2009, staff re-inspected the commercial portion of the development and again observed significant storm water management problems. These problems included large graded areas with steep slopes with very minimal erosion control BMPs, poorly installed and maintained sediment control BMPs, and poorly protected drain inlets. In addition, discharges of sediment-laden storm water were observed entering Jackson Creek. Board staff conducted turbidity field measurements of the western outfall discharge from the site and of Jackson Creek, upstream of the construction site. The turbidity was measured to be 979 NTUs at the western outfall location and 30 NTUs at Jackson Creek, upstream of the construction project. Downstream turbidity was not measured because of problems with access; however, staff observed that the turbidity in the creek downstream of the discharge location was significantly higher than that upstream, and did not observe other sources of turbid discharges, as shown in the photographs in Attachment H. According to California Department of Fish and Game (DFG) the high turbidity entering Jackson Creek was detrimental to aquatic life in Jackson Creek. The DFG memo is included as Attachment G to this Complaint.

To calculate runoff during the 17 February storm event, staff used Tiger Creek Powerhouse (TCP) rainfall data and conservatively estimated the disturbed area contributing to the runoff to be 6 acres. The rainfall for the day was 1.12 inches. Using the rational method, staff conservatively calculated that the commercial portion of the site discharged over 54,000 gallons of turbid storm water during the rain event. After the inspection, staff called the Discharger and notified him of the storm water management problems observed on the project and requested that he implement additional BMPs to come into compliance.

13. On 19 February 2009, Board staff issued a second Notice of Violation to the Discharger for the violations observed during the 17 February 2009 inspection. This Notice is included as Attachment H to this Complaint.
14. On 22 February 2009, Board staff re-inspected the commercial portion of the development. The inspection was conducted shortly after a significant rain event, and light

rain was still falling on the construction site during the inspection. Board staff inspected the entire site and found no significant storm management improvements since the last site inspection. Board staff also observed a turbid storm water discharge at both the eastern and western outfall locations. Discharge from the western outfall location was measured using a field turbidity meter to have a turbidity of 520 NTUs. Jackson Creek was also measured upstream of the construction site to have a turbidity of 18 NTUs. Downstream turbidity was not measured because of problems with access; however, staff observed that the turbidity in the creek downstream of the discharge location was significantly higher than that upstream and did not observe other sources of turbid discharges, as shown in the photographs in Attachment I to this Complaint.

To calculate runoff during the 22 February storm event, staff again used the TCP rainfall data, which showed 0.84 inches of rain for that day. Using the rational method, staff conservatively calculated that the commercial portion of the site discharged over 40,000 gallons of turbid storm water during the rain event.

15. On 23 February 2009, Board staff conducted a follow-up inspection during a light rain. Staff again observed turbid storm water discharges into Jackson Creek from both outfall areas. The turbidity of the discharge from western outfall location was measured to be 384 NTUs. The turbidity of Jackson Creek upstream of the construction site was measured to be 30 NTUs. Downstream turbidity was not measured because of problems with access; however, staff observed that the turbidity in the creek downstream of the discharge location was significantly higher than that upstream and did not observe other sources of turbid discharges, as shown in the photographs in Attachment J to this Complaint.

To calculate runoff during the 23 February storm event, staff again used the TCP rainfall data, which showed 0.94 inches of rain for that day. Using the rational method, staff conservatively calculated that the commercial portion of the site discharged over 45,000 gallons of turbid storm water during the rain event. After the inspection staff called the Discharger and notified them of the storm water management problems observed during the site inspection.

16. On 23 February 2009, the Discharger responded to the second Notice of Violation. The Discharger stated that he met with a storm water consultant and was working on the storm water issues. He submitted a BMP map, inspection reports and photographs of the site.
17. On 4 March 2009, Amador County staff sent Board staff photographs from their 3 March 2009 inspection of the commercial portion of the construction site showing that additional BMPs had been installed on the project.
18. On 12 March 2009, Board staff re-inspected the commercial portion of the development and observed that additional erosion and sediment control BMPs had been installed in many areas of the project. However, Board staff observed some storm water management issues in two specific areas of the project along Ridge Road and along the

west side of the project. Board staff informed the Discharger that additional erosion and sediment control measures were required to stabilize the site in both of these areas.

19. The General Order states, in part, the following:

A. DISCHARGE PROHIBITIONS

3. Storm water discharges shall not cause or threaten to cause pollution, contamination or nuisance.

SECTION A: STORM WATER POLLUTION PREVENTION PLAN

6. ...At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season.

20. Board staff found the site in violation of Section A.6 during each of the nine inspections described above in the Complaint. All of those inspections were conducted during the rainy season. The site continued to have storm water management problems and did not have an effective combination of erosion and sediment control on all disturbed areas as required by the General Permit.

There were four days on which Board staff observed a violation of Discharge Prohibition A.3 of the General Permit. On 24 January 2009 and 17, 22 and 23 February 2009, Board staff observed very turbid discharges of storm water from the site to Jackson Creek. Board staff measured the turbidity on three of the four days and found the turbidity to be significantly higher in the discharge than the background level in Jackson Creek. At a minimum, these discharges threatened to cause pollution, contamination or nuisance in Jackson Creek.

Regulatory Considerations

21. The *Water Quality Control Plan Central Valley Region—Sacramento River and San Joaquin River Basins, Fourth Edition* (hereafter Basin Plan), designates beneficial uses, establishes water quality objectives, and contains implementation plans and policies for all waters of the Basin. The Basin Plan does not specifically identify beneficial uses for Jackson Creek, but does identify present uses for Sacramento-San Joaquin Delta, to which Jackson Creek, via Amador Lake, Dry Creek and the Mokelumne River, is tributary. Through the Basin Plan's tributary rule, the beneficial uses for Jackson Creek are municipal and domestic supply, agricultural supply for irrigation and stockwatering, industrial process supply and service supply, contact water recreation, other non-contact water recreation, warm freshwater aquatic habitat, cold freshwater aquatic habitat, warm and cold fish migration habitat, warm spawning habitat, wildlife habitat and navigation.
22. 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 section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

Violations under CWC section 13385

23. Administrative civil liability may be imposed for violations of the General Permit pursuant to CWC section 13385 which states, in part, that:

(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376

(2) Any waste discharge requirements or dredged and fill material permit.

(5) Any requirements of Sections 301, 302, 306, 307, 308, 318, or 405 of the Federal Water Pollution Control Act as amended.

(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... following:

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

(2) Where there is discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(e) In determining the amount of liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation, or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefits or savings, if any, resulting from the violation, and other matters that justice may require. 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.** Pursuant to CWC section 13385(c), the maximum liability is based on 13 days of violation of the General Permit and the volume of sediment-laden storm water discharged from the site. There are 13 days when the Discharger was in violation of the General Permit due to inadequate BMPs and rainfall events occurred, leading to the discharge of sediment-laden storm water from the site. Those days are 24 and 25 January 2009, and 6, 8, 9, 11, 13, 14, 15, 16, 17, 22 and 23 February 2009. At \$10,000 per day of violation, the maximum liability for days of violation is \$130,000 (13 days x \$10,000 per day).

Board staff also calculated that over 139,000 gallons of sediment-laden storm water were discharged from the site on 17, 22 and 23 February 2009. It is assumed that turbid

discharges also occurred on other days when it rained, but staff conservatively calculated the volume of turbid discharge based on days when staff was present to document and measure the turbidity of the discharge. Board staff measured turbidity of the discharges from the site on these three days and found the turbidity of the discharges to be significantly higher than that of Jackson Creek immediately upstream of the site. Gallons discharged from the site were conservatively estimated taking into account the size of the disturbed area, rainfall data, and application of a runoff coefficient. At \$10 a gallon for each gallon over 1,000 gallons per storm event not susceptible to cleanup, the maximum penalty for the discharges from those three days is \$1,360,000 (136,000 gallons x \$10 per gallon).

The total maximum liability is sum of the liability for days of violation and the liability for gallons discharged that was not susceptible to cleanup, which is equal to \$1,490,000.

25. **Minimum Civil Liability.** Pursuant to CWC section 13385(e), at a minimum, liability shall be assessed at a level that recovers the economic benefits derived from the acts that constitute the violation. The Discharger gained an economic benefit estimated at \$3,500 per acre by not implementing appropriate BMPs at the site, resulting in an estimated cost savings of \$21,000. The assessed penalty is higher than the economic benefit.

DEL RAPINI CONSTRUCTION, INC 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 and fifty-four thousand and five hundred dollars (\$154,500)**. The amount of the proposed liability is based upon a review of the factors cited in California Water Code sections 13385, as well as the State Water Resources Control Board's 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 held at the Central Valley Water Board meeting scheduled on **7/8/9 October 2009**, unless the Discharger does either of the following by **17 August 2009**:
 - a) Waives the hearing by completing the attached form (checking off the box next to item # 4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **one hundred and fifty-four thousand, five hundred dollars (\$154,500)**; or
 - b) Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item # 5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed.

3. If a hearing is conducted, 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
PAMELA C. CREEDON, Executive Officer

16 July 2009
Date

Attachment A: Photographs from the 26 February 2007 inspection
Attachment B: Photographs from the 20 October 2008 inspection
Attachment C: Photographs from the 22 December 2008 inspection
Attachment D: Photographs from the 13 January 2009 inspection
Attachment E: Photographs from the 24 January 2009 inspection
Attachment F: Notice of Violation issued on 2 February 2009
Attachment G: DFG Memo regarding turbidity in Jackson Creek
Attachment H: Second Notice of Violation issued on 19 February 2009
Attachment I: Photographs from the 22 February 2009 inspection
Attachment J: Photographs from the 23 February 2009 inspection

RWM: 16 July 2009

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent Del Rapini Construction, Inc. (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2009-0554 (hereinafter the "Complaint");
2. 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" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and
4. **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
 - a. I certify that the Discharger will remit payment for the proposed civil liability in the amount of **one hundred fifty-four thousand five hundred dollars (\$154,500)** by check, which will contain a reference to "ACL Complaint R5-2009-0554" and will be made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **17 August 2009** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **7/8/9 October 2009** Central Valley Water Board meeting.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period expires. Should the Central Valley Water Board receive 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. New information or comments include those submitted by personnel of the Central Valley Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. 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.

-or-

5. **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0554
CONSIDERATION OF FACTORS PURSUANT TO CWC SECTION 13385**

California Water Code (CWC) Section 13385 (e) states: *“In determining the amount of civil liability, the regional board...shall take into consideration the nature, circumstance, extent and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. 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.”*

In preparing the Administrative Civil Liability Complaint, Board staff considered the following:

Nature and Extent of Violations: The Discharger owns the Pine Grove Bluffs project, a 30-acre residential and commercial development west of Pine Grove in Amador County. The commercial portion of the development encompasses about 12 acres of the project and discharges into the middle fork of Jackson Creek.

The Discharger violated the General Permit by failing to install and maintain Best Management Practices (BMPs) on the Pine Grove Bluff construction site and by discharging highly turbid storm water into Jackson Creek. Turbid discharges were observed by Board staff on three occasions and were measured to have significantly higher turbidity than the receiving water.

The Discharger violated Section A.6 of the General Permit which requires that, “At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season.” The Discharger also violated Discharge prohibition A.3 of the General Permit states that, “Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.” At a minimum, the discharge of highly turbid storm water threatened to cause pollution, contamination or nuisance.

Circumstances: This construction site continued to have storm water management problems throughout the wet season even though it received multiple inspections from Board and County staff.

Gravity: The Discharger did not come into compliance with the General Permit and caused discharges of sediment-laden storm water to the nearby Jackson Creek. From 24 January 2009 to 23 February 2009, Board staff’s inspections documented that the site lacked adequate BMPs, and during that period, there were 13 days of adequate precipitation to produce runoff. Board staff conducted field turbidity measurements of the runoff from the site as well as Jackson Creek upstream of the site and found much higher levels of turbidity in the discharge from the site.

Toxicity: Turbidity measurements were taken at the western discharge location from the construction site and upstream in Jackson Creek on 17, 22, and 23 February 2009. Turbidity measurements taken at the discharge location were 979, 520, and 384 NTUs, respectively. Turbidity measurements taken at Jackson Creek upstream of the construction site were 30, 18 and 30 NTUs, respectively. On 22 and 23 February, measurements were taken after significant rain events the night before and runoff from the site was minimal during the inspection. The highly turbid runoff contained suspended sediments, which could have reduced habitat for aquatic life as

well as caused deleterious effects due to physical impacts. The DFG memo is included as Attachment G to the Complaint.

Susceptibility of the Discharge to Cleanup: Once the turbid runoff entered Jackson Creek, there was no practical way to clean up to avoid impacts to water quality or beneficial uses.

Degree of Culpability: The Discharger obtained coverage under the General Permit and was assigned WDID No. 5S03C337319 on 27 September 2005. The Discharger was aware of the General Permit requirements. Both Board and Amador County staff met with the Discharger on a number of occasions and discussed the need to effectively stabilize the site and protect water quality in Jackson Creek.

Degree of Cooperation: The Discharger was friendly but not cooperative with the Central Valley Water Board staff or Amador County staff regarding onsite storm management issues. Towards the end of the wet season the Discharger appeared to understand the gravity of the situation and became more cooperative, but the Discharger did not implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season as required by the General Permit.

Prior History of Violations: Board staff has issued several other enforcement letters to the Discharger for another construction project in Placer County. The Discharger received a Notice of Non-compliance in 2007 and a Notice of Violation in 2008 for the Cerise Estates construction project in Placer County. The Cerise Estates construction site also had storm water management problems because of inadequate BMPs.

Economic Benefit: The Discharger saved approximately \$21,000 by not implementing adequate erosion and sediment control BMPs. Based on a survey of consultants, 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 Pine Grove Bluffs construction site has erodible soils and steep slopes; therefore, an effective combination of both erosion and sediment control BMPs is critical to protect the site. Since only a few BMPs were installed on the project for most of the wet season, 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 \$3,500 per acre. Board staff conservatively estimated that erosion and sediment control was necessary on 6 acres of the project. The economic benefit was estimated by multiplying 6 acres by \$3,500 per acre.

Other Matters as Justice May Require

- a. **Staff Costs:** Board staff spent a total of 150 hours investigating this incident and preparing this Complaint. The total cost for staff time is \$22,500 based on a rate of \$150 per hour.
- b. **Ability of the Discharger to Pay:** Board staff contacted the assessor's office in Amador and Placer counties. Board staff found the Discharger owns 19 properties in Amador County encompassing approximately 44 acres. One .83 acre commercial property is worth \$400,000, but the other properties values were not available. Eight properties were found in Placer County encompassing approximately 338 acres, with an assessed value of \$2,473,730.

Central Valley Regional Water Quality Control Board

PROPOSED DRAFT HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2009-0554

ISSUED TO
DEL RAPINI CONSTRUCTION, INC.
PINE GROVE BLUFFS
AMADOR COUNTY

SCHEDULED FOR 7/8/9 OCTOBER 2009

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 Del Rapini Construction, Inc., alleging violations of CWC section 13385 by failing to comply with the terms of the General Permit for Storm Water Discharges Associated with Construction Activity.

The Complaint proposes that an administrative civil liability in the amount of \$154,500 be imposed. A hearing is currently scheduled to be conducted before the Central Valley Water Board during its 7/8/9 October 2009 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 7/8/9 October 2009 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

Hearing Procedures

The hearing will be conducted in accordance with this Hearing Procedure. This proposed draft version of the Hearing Procedure has been prepared by the Prosecution Team, and is subject to revision and approval by the Central Valley Water Board's Advisory Team. 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 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Gov't Code § 11500) does not apply to this hearing.

THESE PROCEDURES HAVE BEEN PROPOSED BY THE CENTRAL VALLEY WATER BOARD'S PROSECUTION TEAM FOR USE IN THE ADJUDICATION OF THIS ADMINISTRATIVE CIVIL LIABILITY ACTION. THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. **ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE CENTRAL VALLEY WATER BOARD'S ADVISORY TEAM NO LATER THAN 27 JULY 2009, OR THEY WILL BE WAIVED.** THESE DRAFT HEARING PROCEDURES WILL BECOME FINAL AT 5:00 P.M. ON 27 JULY 2009 IF NO PARTY SUBMITS TIMELY OBJECTION(S), OR AS OTHERWISE DIRECTED BY THE ADVISORY TEAM. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

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. Del Rapini Construction, Inc.

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 3 August 2009 to Lori Okun (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), 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 3 August 2009. The parties will be notified by 5 p.m. on 17 August 2009 whether the request has been granted or denied.

Primary Contacts

Advisory Team:

Ken Landau, Assistant Executive Officer
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Lori Okun, Senior Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
1001 I Street
Sacramento, CA 95814
Phone: (916)341-5165; fax: (916) 341-5199
lokun@waterboards.ca.gov

Prosecution Team:

Pamela Creedon, Executive Officer
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Wendy Wyels, Environmental Program Manager
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
Phone: (916)464-4835; fax: (916)464-4645
wwyels@waterboards.ca.gov

Patrick Pulupa, Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
1001 I Street
Sacramento, CA 95814
Phone: (916)341-5189; fax: (916) 341-5199
ppulupa@waterboards.ca.gov

Discharger Representative:

Mr. Del Rapini
Del Rapini Construction, Inc.
28555 Rollins Lake Road
Colfax, CA 95713

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 Lori Okun, Senior Staff Counsel. Members of the Prosecution Team are: Pamela Creedon, Executive Officer; Wendy Wyels, Environmental Program Manager; Sue McConnell, Senior Water Resources Control Engineer; Rich Muhl, Environmental Scientist; and Patrick Pulupa, Staff Counsel. 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. Members of the Prosecution Team 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.

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 25 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 no later than ten days after all of the evidence has been received. 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.

Submission of Evidence and Policy Statements

The following information must be submitted 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.
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.
4. The qualifications of each expert witness, if any.

The evidence upon which the Complaint is based has been entered into the administrative file by time this Complaint is issued. However, the Prosecution Team may submit additional evidence into the administrative file until 5 p.m. on 24 August 2009. The Board's Advisory Team, all other Designated Parties, and all Interested Parties will be notified if additional evidence is added to the file, and will be provided with copies of the additional evidence. Should the Prosecution Team require witnesses to provide direct testimony at the Hearing, the Prosecution Team will provide the Board's Advisory Team, all other Designated Parties, and all Interested Parties with the information contained in items 3 and 4, above, by 5 p.m. on 24 August 2009.

The remaining designated parties shall submit 11 hard copies and one electronic copy of the information described in items 1 through 4 above to Ken Landau so that they are received no later than 5 p.m. on 8 September 2009. In addition to the foregoing, each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above. The Designated Parties should submit all rebuttal evidence to Ken Landau no later than 5 p.m. on 17 September 2009, in order to allow all parties to consider all evidence prior to the hearing. "Rebuttal evidence" is limited to evidence that is offered to disprove or contradict evidence presented by an opposing party.

If the total amount of information submitted by any party is less than 15 pages, that party may submit the information by email, rather than in writing. In addition to the foregoing, each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above.

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. 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. 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, Suite 200 in Rancho Cordova. 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/>

Although the web page is updated regularly, to assure access to the latest information, you may contact Sue McConnell at (916) 464-4798 or Rich Muhl at (916) 464-4749.

Questions

Questions concerning this proceeding may be addressed to Lori Okun at (916) 341-5165.

IMPORTANT DEADLINES

(Note: the Central Valley Water Board is required to provide a hearing within 90 days of issuance of the Complaint (CWC § 13323). The Advisory Team will generally adhere to this schedule unless the discharger submits a waiver and it is accepted.)

16 July 2009	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice
27 July 2009	Objections due on proposed Hearing Procedure; Hearing Procedure becomes final if no Objections
3 August 2009	Deadline for submission of request for designated party status.
10 August 2009	Deadline for opposition to request for designated party status.
17 August 2009	Advisory Team issues decision on requests for designated party status, if any.
17 August 2009	Discharger's deadline for submitting signed form to waive right to hearing within 90 days.
24 August 2009	Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
8 September 2009	Remaining Designated Parties' (including the Discharger) Deadline for submission of all information required under "Evidence and Policy Statements," above.
17 September 2009	All Designated Parties' should submit all rebuttal evidence (if any) and evidentiary objections by this date.
7/8/9 October 2009	Hearing

Central Valley Regional Water Quality Control Board

PROPOSED DRAFT HEARING PROCEDURES
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2009-0554

ISSUED TO
DEL RAPINI CONSTRUCTION, INC.
PINE GROVE BLUFFS
AMADOR COUNTY

SCHEDULED FOR 9/10 DECEMBER 2009

PLEASE READ THESE HEARING PROCEDURES 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 Del Rapini Construction, Inc., alleging violations of CWC section 13385 by failing to comply with the terms of the General Permit for Storm Water Discharges Associated with Construction Activity.

The Complaint proposes that an administrative civil liability in the amount of \$154,500 be imposed. A hearing is currently scheduled to be conducted before the Central Valley Water Board during its 9/10 December 2009 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 9/10 December 2009 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

Hearing Procedures

The hearing will be conducted in accordance with this Hearing Procedure. This proposed draft version of the Hearing Procedure has been prepared by the Board's Prosecution Team, and is subject to revision and approval by the Board's Advisory Team. 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 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Gov't Code § 11500) does not apply to this hearing.

THESE PROCEDURES HAVE BEEN PROPOSED BY THE CENTRAL VALLEY WATER BOARD'S PROSECUTION TEAM FOR USE IN THE ADJUDICATION OF THIS ADMINISTRATIVE CIVIL LIABILITY ACTION. THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. **ANY OBJECTIONS TO THE HEARING PROCEDURES MUST BE RECEIVED BY THE CENTRAL VALLEY WATER BOARD'S ADVISORY TEAM NO LATER THAN 12 OCTOBER 2009, OR THEY WILL BE WAIVED.** THESE DRAFT HEARING PROCEDURES WILL BECOME FINAL AT 5:00 P.M. ON 12 OCTOBER 2009 IF NO PARTY SUBMITS TIMELY OBJECTION(S), OR AS OTHERWISE DIRECTED BY THE ADVISORY TEAM. 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. Del Rapini Construction, Inc.

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 **15 October 2009** to Lori Okun (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 **26 October 2009**. The parties will be notified by 5 p.m. on **4 November 2009** whether the request has been granted or denied.

Primary Contacts

Advisory Team:

Mr. Kenneth Landau, Assistant Executive Officer
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
klandau@waterboards.ca.gov

Ms. Lori Okun, Senior Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
1001 I Street
Sacramento, CA 95814
Phone: (916)341-5165; fax: (916) 341-5199
lokun@waterboards.ca.gov

Prosecution Team:

Ms. Pamela Creedon, Executive Officer
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Ms. Wendy Wyels, Environmental Program Manager
Mr. Steve Rosenbaum, Senior Engineering Geologist
Mr. Rich Muhl, Environmental Scientist
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
Phone: (916) 464-4835; fax: (916) 464-4645
wwyels@waterboards.ca.gov

Mr. Patrick Pulupa, Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
1001 I Street
Sacramento, CA 95814

Phone: (916) 341-5189; fax: (916) 341-5199
ppulupa@waterboards.ca.gov

Discharger Representatives:

Mr. Del Rapini
Del Rapini Construction, Inc.
28555 Rollins Lake Road
Colfax, CA 95713

Ms. Barbara Brenner
Ms. Melissa Foster
Stoel Rives, LLP
980 Ninth Street, Suite 1900
Phone: (916) 447-0700; fax: (916) 447-4781
mafoster@stoel.com

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 and Lori Okun. Members of the Prosecution Team are: Pamela Creedon, Wendy Wyels, Steve Rosenbaum, Rich Muhl, and Patrick Pulupa. 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. Members of the Prosecution Team 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 **18 November 2009**. 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 **3 December 2009**. 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 Lori Okun 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 Lori Okun. Each other designated party shall submit 3 hard copies and one electronic copy to Kenneth Landau and one electronic copy to Lori Okun. Kenneth Landau and Lori Okun must receive all submissions 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 of their rebuttal information to Kenneth Landau and one electronic copy of the information to Lori Okun 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 **24 November 2009**, 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 **24 November 2009**. 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, Suite 200, Rancho Cordova. 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/>

Although the web page is updated regularly, to assure access to the latest information, you may contact Steve Rosenbaum at (916) 464-4631 or Rich Muhl at (916) 464-4749.

Questions

Questions concerning this proceeding may be addressed to Lori Okun at (916) 341-5165.

IMPORTANT DEADLINES

(Note: the Central Valley Water Board is required to provide a hearing within 90 days of issuance of the Complaint (CWC § 13323). The Advisory Team will generally adhere to this schedule unless the discharger submits a waiver and it is accepted.)

16 July 2009	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed 7/8/9 October 2009 Hearing Procedures to Discharger and Advisory Team, and publishes Public Notice
13 August 2009	Discharger waives right to a hearing in 90 days
29 September 2009	Prosecution Team issues 9/10 December 2009 Hearing Procedures to Discharger and Advisory Team
12 October 2009	Objections due on proposed Hearing Procedure; Hearing Procedures becomes final if no Objections
15 October 2009	Deadline for submission of request for designated party status.
26 October 2009	Deadline for opposition to request for designated party status.
4 November 2009	Advisory Team issues decision on requests for designated party status, if any.
26 October 2009	Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
16 November 2009	Remaining Designated Parties' (including the Discharger) Deadline for submission of all information required under "Evidence and Policy Statements," above.
16 November 2009	Prosecution Team submits an electronic copy to Kenneth Landau and Lori Okun of all documents cited in the complaint or Staff Report, unless previously submitted.
24 November 2009	All Designated Parties shall submit all rebuttal evidence, written rebuttal to legal argument and/or written rebuttal to policy statements; and all evidentiary objections to other Designated Parties' submittals.
18 November 2009	Requests for additional hearing time (see Hearing Time Limits, above)
3 December 2009	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.

24 November 2009 Interested persons' comments are due.

24 November 2009 Prosecution Team's deadline to submit Buff Sheet.

9/10 December 2009 Hearing



California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair



Arnold
Schwarzenegger
Governor

Linda S. Adams

Secretary for
Environmental Protection

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114

Phone (916) 464-3291 • FAX (916) 464-4645

<http://www.waterboards.ca.gov/centralvalley>

29 September 2009

Mr. Del Rapini
Del Rapini Construction, Inc.
28555 Rollins Lake Road
Colfax, CA 95713

Ms. Barbara Brenner
Stoel Rives
980 Ninth Street
Sacramento, CA 95814

HEARING PROCEDURES FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0554, DEL RAPINI CONSTRUCTION INC, PINE GROVE BLUFFS, AMADOR COUNTY

An Administrative Civil Liability Complaint (Complaint) was issued to Del Rapini Construction, Inc. by the Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) on 16 July 2009. The Complaint charged Del Rapini Construction, Inc. with civil liability in the amount of one hundred and fifty-four thousand and five hundred dollars (\$154,500) for violations of the NPDES General Permit for Storm Water Discharges Associated with Construction Activities, NPDES No. CAS000002, Order No. 99-08-DWQ. The violations occurred at the Pine Grove Bluffs construction site in Amador County. On 13 August 2009, the Central Valley Water Board received a waiver from Del Rapini Construction, Inc. that waived the Board's requirement to hold a hearing on the matter within 90-days of service of the Complaint.

Although Del Rapini Construction, Inc. has engaged in settlement discussions with the Board's Prosecution Team, these discussions have failed to produce a settlement of the alleged violations. **If the matter is not settled by 23 October 2009**, the Board's Prosecution Team will schedule the matter for consideration at the **9/10 December 2009** Central Valley Water Board meeting in Rancho Cordova.

The attached Hearing Procedures are proposed by the Prosecution Team to govern the hearing and to provide deadlines for evidentiary and legal submissions. Any objections to the use or content of these proposed Hearing Procedures must be received by Lori Okun, whose contact information is listed in the Hearing Procedures, by **5 p.m. on 12 October 2009**. 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 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/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.

California Environmental Protection Agency

If you have any questions or comments regarding the Hearing Procedures and/or the Administrative Civil Liability Complaint, please contact me by phone at (916) 464-4835 or by e-mail at wwyels@waterboards.ca.gov. I am also available to meet to discuss settlement of this matter.

WENDY WYELS
Supervisor, Compliance and Enforcement Section

Enclosures: Hearing Procedures

cc w/o encl: Mr. Eugene Bromley, U.S. EPA, Region IX, San Francisco
Mr. Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Ms. Lori Okun, Office of Chief Counsel, SWRCB, Sacramento
Ms. Emel Wadhvani, Office of Chief Counsel, SWRCB, Sacramento
Mr. Reed Sato, Enforcement Unit, SWRCB, Sacramento
Mr. Ken Landau, Central Valley Water Board, Rancho Cordova
Ms. Carol Oz, California Department of Fish and Game, Rancho Cordova
Mr. Patrick Halvorsen, Contractors State License Board, Sacramento
Mr. Martin Price, Amador County Public Works, Jackson