

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2006-0501

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

TEHAMA MARKET ASSOCIATES, LLC
LINKSIDE PLACE SUBDIVISION
BUTTE COUNTY

This revised complaint is issued to Tehama Market Associates, LLC, based on a finding of a violation of the Clean Water Act (CWA) Section 301, California Water Code (CWC) Section 13376, and the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 Order No. 99-08-DWQ (General Permit), pursuant to the provisions of Section 13385 of the CWC, which authorizes the imposition of Administrative Civil Liability (ACL), and of CWC Section 13323, which authorizes the Executive Officer to issue this complaint.

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

1. On 23 November 2004, an Administrative Civil Liability Complaint (ACLC) No. R5-2004-0541 was issued to Linkside Place, LLC in the amount of one hundred thousand dollars (\$100,0000) for violations of the CWA Section 301, CWC Section 13776 and the NPDES General Permit No. CAS000002 (Order No. 99-08-DWQ).
2. Central Valley Water Board staff subsequently conducted research of the property ownership of the Linkside Place subdivision and found that the property had changed ownership several times since obtaining coverage under the General Permit and that the original ACL complaint may not have named the appropriate Discharger.
3. Extensive research by staff from the State Water Resources Control Board (SWRCB) and Central Valley Water Board determined that Linkside Place, LLC was not a Discharger. The same research determined that Tehama Market Associates, LLC was the Discharger as title to the subdivision was transferred to Tehama Market Associates, LLC just prior to the period of noted violations subject to this complaint. Tehama Market Associates, LLC retained title to the property until October 2004 at which time title was transferred back to Linkside Place, LLC.
4. A Notice of Intent (NOI) to comply with terms of the NPDES General Permit to discharge stormwater associated with construction activity at the Linkside Place subdivision was submitted on 14 October 2003, by Bert Garland, on behalf of the property owner at that time, William Isaac. They received confirmation and WDID No. 5R04C324269 on 23 October 2003. William Isaac subsequently conveyed the Linkside Place subdivision to Tehama Market Associates, LLC in December 2003. Tehama Market Associates, LLC owned the Linkside Place subdivision at the time of the noted violations on 18 February 2004 and 25 February 2004.
5. Based on, but not limited to Finding Nos. 1-4, Tehama Market Associates, LLC is hereby designated as Discharger.

6. The Discharger was the owner and developer of an 18.6-acre residential development known as Linkside Place subdivision. The site is being developed into approximately 65 single-family residences with utilities, roads and open space located on the south side of Highway 162, four miles west-southwest of Oroville, in Butte County. (Assessor Parcel Number 030-260-021). The contractor for the project is E-Ticket Construction.
7. Runoff from the site discharges to unnamed ephemeral drainages and wetlands that are tributary to Thermalito Afterbay, which is tributary to the Feather River. The existing beneficial uses of Feather River designated in the Regional Board Water Quality Control Plan for the Sacramento and San Joaquin Rivers-4th Edition 1998 (Basin Plan) are municipal and domestic supply, agricultural irrigation; contact recreation, canoeing and rafting; non-contact recreation; warm and cold freshwater habitat; warm and cold water migration; warm and cold water spawning and wildlife habitat.
8. On 19 August 1999, the SWRCB adopted the General Permit, implementing the Waste Discharge Requirements for storm water discharges associated with construction activity. The General Permit requires that dischargers of storm water to surface waters associated with construction activity, including clearing, grading, and excavation activities, file a NOI to obtain coverage under the General Permit, and requires dischargers to implement best management practices (BMPs) to implement Best Available Technology and Best Conventional Pollutant Control Technology (BAT/BCT) to prevent storm water pollution.
9. Although the Discharger owned the Linkside Place subdivision at the time of the noted violations on 18 February 2004 and 25 February 2004, the Discharger failed to file a Notice of Intent for coverage under the General Permit. Bert Garland or William Isaac also failed to file a Change of Information Form or terminate coverage under General permit after to conveying the Linkside Place subdivision to the Discharger.
10. CWC Section 13376 states, in part: "Any person discharging pollutants or proposing to discharge pollutants to navigable water of the United States . . . shall file a report of waste discharge in compliance with the procedures set forth in Section 13260 . . ." and "The discharge of pollutants . . . except as authorized by waste discharge requirements [NPDES permit] . . . is prohibited."
11. The Discharger is alleged to have violated provisions of law for which the Central Valley Water Board may impose liability under Section 13385(c)(1) and (2) of the CWC. These provisions state:

Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

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

(2) Where there is a 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.

12. General Order No. 99-08-DWQ states, in part, the following:

A. DISCHARGE PROHIBITIONS:

2. Discharges of material other than storm water, which is not otherwise authorized by an NPDES permit to a separate storm sewer system (MS4) or waters of the nation are prohibited, except as allowed in Special Provisions for Construction Activity, C.3.
3. Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.

B. RECEIVING WATER LIMITATIONS:

2. The SWPPP developed for the construction activity covered by the General Permit shall be designed and implemented such that storm water discharges and authorized non-storm water discharges shall not cause or contribute to an exceedence of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable RWQCB's Basin Plan.

C. SPECIAL PROVISIONS FOR CONSTRUCTION ACTIVITY:

2. All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT performance standard.
3. Discharges of non-storm water are authorized only where they do not cause or contribute to a violation of any water quality standard and are controlled through implementation of appropriate BMPs for elimination or reduction of pollutants. Implementation of appropriate BMPs is a condition for authorization of non-storm water discharges. Non-storm water discharges and the BMPs appropriate for their control must be described in the SWPPP. Wherever feasible, alternatives which do not result in discharge of non-storm water shall be implemented in accordance with Section A.9. of the SWPPP requirements.

SECTION A: STORM WATER POLLUTION PREVENTION PLAN:

1. Objectives

- c. ...and maintain BMPs to reduce or eliminate pollutants in storm water discharges and authorized non-storm water discharges from the construction site during construction...

6. Erosion Control

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

9. Non-Storm Water Management

... Discharging sediment laden water which will cause or contribute to an exceedance of the applicable RWQCB's Basin Plan from a dewatering site or sediment basin into any receiving water or storm drain without filtration or equivalent treatment is prohibited."

13. Section 301 of the CWA and Section 13376 of the CWC prohibit the discharge of pollutants to surface waters except in compliance with an NPDES permit.
14. The Discharger has violated Discharge Prohibitions A.2, A.3; Receiving Water Limitation B.2; Special Provisions for Construction Activity C.2, C.3; and Section A: Storm Water Pollution Prevention Plan A.1.c, A.6 and A.9 of the General Permit. These violations were caused by the Discharger's failure to properly implement and maintain effective BMPs using BAT/BCT performance standards, which led to the discharge of pollutants to waters of the United States from the subject construction site. Pursuant to CWC Section 13385 (a)(2) and (a)(5), civil liability may be imposed based on the following facts:
 - (a) On 18 February 2004, Central Valley Water Board staff observed dewatering operations at the site. The dewatering pump was leaking fuel into the detention pond. The detention pond had a visible petroleum hydrocarbon sheen adjacent to the dewatering pump. The pump was discharging the petroleum hydrocarbon polluted dewater off-site into ephemeral drainages and wetlands adjacent to the site. The discharge of material other than storm water which is not authorized by an NPDES permit is a violation of Discharge Prohibition A.2. In addition, the dewatering discharge was sediment laden and highly turbid; the discharge from the dewatering operations into receiving waters without filtration or equivalent treatment caused an exceedance of the Central Valley Water Board Basin Plan turbidity water quality objective, which is a violation of Section A: Storm Water Pollution Prevention Plan No. 9 Non-Storm Water Management. After the inspection, Central Valley Water Board staff contacted the Discharger's representative, who acknowledged that the pump was leaking fuel and that the discharge occurred from 0800 hours to approximately 1630 hours (8½ hours). A conservative estimate of the flow was 16 gallons per minute (gpm), or 8,160 gallons of discharge during the dewatering operation.
 - (b) On 18 February 2004, Central Valley Water Board staff observed the discharge of highly turbid and sediment-laden storm water off-site into ephemeral drainages and wetlands adjacent to the site. The failure to implement controls to reduce pollutants in storm water discharges from the construction site to the BAT/BCT performance standard is a violation of Special Provisions for Construction Activity C.2. The discharge caused a violation of the turbidity water quality objective, which is a violation of Special Provisions for Construction Activity C.3.
 - (c) On 18 and 25 February 2004, Central Valley Water Board staff observed storm water discharges from the site causing or threatened to cause pollution, contamination, or nuisance. Central Valley Water Board staff, on 18 February 2004, observed sediment laden storm water discharging offsite from culverts; flow from one culvert was conservatively estimated at 2,430 gallons (27 gpm for 1½ hours). On 25 February 2004,

the discharge flow of sediment laden storm water from two culverts on the east side of the project was conservatively estimated at 9,450 gallons (combined flow of 63 gpm for 2½ hours). These discharges are violations of Discharge Prohibition A.3.

(d) Other violations observed by Central Valley Water Board staff on both 18 and 25 February 2004 (six violations):

- (i) Receiving Water Limitation B.2 violations. The SWPPP was not designed and implemented such that storm water discharges and authorized non-storm water discharges did not cause or contribute to an exceedance of water quality objectives contained in the Central Valley Water Board Basin Plan;
- (ii) Section A: Storm Water Pollution Prevention Plan No. 1 Objectives violations. The BMPs were not being maintained.
- (iii) Section A: Storm Water Pollution Prevention Plan No. 6 Erosion Control violations. The Discharger had not deployed an effective combination of erosion and sediment control on all disturbed areas during the rainy season.

15. The Discharger is also subject to administrative civil liability pursuant to CWC Section 13385(a)(5) because the Discharger owned the property at the time of the noted violations on 18 February 2004 and 25 February 2004 and these discharges constitute a violation of Clean Water Act (CWA) Section 301 and CWC Section 13376. Under CWC Section 13385(a)(5), administrative civil liability extends to the violation of any of the requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405.

16. The Discharger is alleged to have violated provisions of law for which the Central Valley Water Board may impose liability under CWC Section 13385(c)(2). Section 13385 of the CWC states, in part:

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

(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 Clean Water 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 sum of both of 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 any 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.”

17. The discharge from the detention pond dewatering was conservatively estimated at 8,160 gallons on 18 February 2004. The discharge of sediment-laden storm water off-site on 18 and 25 February 2004 was conservatively estimated at 11,880 gallons. The Discharger has a civil liability of \$190,400 based on the estimated discharge (20,040 gallons minus 1,000 gallons at \$10 per gallon).
18. Twelve violations of the General Permit were observed on 18 and 25 February 2004, resulting in an additional civil liability of \$10,000 per day per violation for \$120,000. Additional days and possible additional locations of discharge most likely occurred based on precipitation data. However, these additional days and possible additional locations of discharge were not considered in this calculation as staff did not directly observe such discharges or staff was unable to estimate the flow.
19. Pursuant to CWC Section 13385(c), the Discharger has a maximum civil liability of \$310,400 (for each of the General Permit violations and the gallons of polluted water discharged).
20. Central Valley Water Board staff spent a total of 150 hours investigating this incident and preparing the Complaint. The total cost for staff time is \$12,000 based on a rate of \$80 per hour including overhead costs.
21. The Discharger did install some sediment controls around the periphery of the construction site. Sediment controls were deployed in approximately 10 percent of the total area disturbed. The Discharger should have installed, at a minimum, an effective combination of erosion and sediment control on all disturbed areas during the rainy season. The construction site is approximately 18.6-acres. Therefore, the estimated economic benefit for not stabilizing the remaining 90 percent of the construction site with an effective combination of erosion and sediment control best management practices is calculated at \$2000 per acre or \$33,480. The total economic benefit for the project is estimated at \$33,480.
22. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321(a)(2), Title 14 of the California Code of Regulations.

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2004-0541 IS RESCINDED AND
TEHAMA MARKET ASSOCIATES, LLC IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes the assessment of Administrative Civil Liability in the amount of **one hundred thousand dollars (\$100,000)**. The amount of the liability proposed is based on a review of factors cited in CWC Section 13385 presented in Finding No. 16 above, and the State Water Resources Control Board's Water Quality Enforcement Policy.
2. A hearing on this matter will be scheduled for either **16 or 17 March 2006** Central Valley Water Board meeting unless the Discharger agrees to waive a hearing and pay the proposed civil liability in full.
3. If a hearing in this matter is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. The Discharger may waive the right to a hearing, in which case, the Central Valley Water Board may not hold a hearing. If the Discharger wishes to waive the right to a hearing, sign the attached waiver form and return it with a check made payable to the State Water Resources Control Board, Cleanup and Abatement Account in the amount of the civil liability, to the Regional Board Redding office by **23 February 2006**. Any waiver will not be effective until 30 days from the date of this complaint to allow interested persons to comment on this action.



KENNETH D. LANDAU, Acting Executive Officer

1-25-2006

(Date)

**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 Tehama Market Associates, LLC (hereafter Discharger) in connection with Administrative Civil Liability Complaint No. R5-2006-0501 (hereafter Complaint).
2. I am informed of the right provided by Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint.
3. I hereby waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Valley Region.
4. I understand that I am giving up the Discharger's right to be heard, and to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, civil liability proposed.
5. I agree to remit payment for the civil liability imposed in the amount of one hundred thousand dollars (\$100,000) by check, which contains a reference to ACL Complaint No. R5-2006-0501 and is made payable to the "State Water Resources Control Board, Cleanup and Abatement Account."
6. I understand the payment of the above amount constitutes a settlement of the Complaint that will not become final until after a public comment period.
7. I understand that the Executive Officer has complete discretion to modify or terminate this settlement during the 30-day public comment period, which began on the date of the Complaint.
8. 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.

Date

Name and Title (Print)

Signature



California Regional Water Quality Control Board

Central Valley Region



Alan Lloyd, PhD
Secretary for
Environmental
Protection

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Arnold Schwarzenegger
Governor

25 January 2006

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ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2006-0501, TEHAMA MARKET ASSOCIATES, LLC, LINKSIDE PLACE SUBDIVISION, BUTTE COUNTY

Enclosed is an Administrative Civil Liability (ACL) Complaint for violations of Clean Water Act (CWA) Section 301, California Water Code (CWC) Section 13376, and the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 Order No. 99-08-DWQ (General Permit). The CWC Section 13385 authorizes the Regional Water Quality Control Board (Central Valley Water Board) to impose administrative civil liability on a discharger for such violations.

On 23 November 2004 the Central Valley Water Board issued ACL Complaint No. R5-2004-0541 to Linkside Place LLC for violations of Clean Water Act Section 301, CWC Section 13376, and the NPDES General Permit. Linkside Place LLC was not the property owner at the time of the violations. ACL Complaint No. R5-2006-0501 rescinds and replaces ACL Complaint No. R5-2004-0541.

A representative of Tehama Market Associates, LLC may sign the enclosed waiver and pay the one-hundred thousand dollar (\$100,000) liability, or such representative may appear at a hearing before the Central Valley

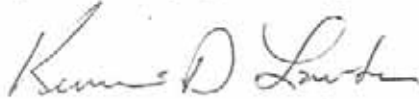
California Environmental Protection Agency



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Water Board. This matter is scheduled to be heard by the Central Valley Water Board, on **16 or 17 March 2006**.

If you have any questions, please contact Scott A. Zaitz or George D. Day at (530) 224-4845.



KENNETH D. LANDAU
Acting Executive Officer

Enclosure: Administrative Civil Liability Complaint No.R5-2006-0501

cc+encl: Regional Board Members
Mr. Rick Brausch, U.S. Environmental Protection Agency, Region IX, San Francisco
Mr. Jason Brush, U.S. Environmental Protection Agency, Region IX, San Francisco
Ms. Andrea Jones, U.S. Army Corps of Engineers, Sacramento
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