

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2005-0517

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

LAFFERTY HOMES, INC.-SIERRA CROSSING
EL DORADO COUNTY

This complaint is issued to Lafferty Homes, Inc. (hereafter Discharger) based on a finding of violations of Clean Water Act 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, pursuant to the provisions of Section 13385 of the CWC, which authorizes the imposition of an Administrative Civil Liability.

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

1. The Discharger is the owner and developer of Sierra Crossing a 48.5-acre construction project in El Dorado County. The site is being developed into residential homes. Runoff from the site discharges to Spring Creek, a tributary of the American River.
2. The existing beneficial uses of the American River are municipal, industrial, and agricultural supply; recreation; aesthetic enjoyment; navigation; groundwater recharge, fresh water replenishment; and preservation and enhancement of fish, wildlife and other aquatic resources.
3. On 19 August 1999, the State Water Resources Control Board adopted NPDES General Permit No. CAS000002, Order No. 99-08-DWQ, implementing the Waste Discharge Requirements (WDRs) for storm water discharges associated with construction activity.
4. General Order No. 99-08 DWQ requires that dischargers of storm water to surface waters associated with construction activity file a Notice of Intent (NOI) to obtain coverage under the General NPDES permit and to utilize best available technology economically achievable (BAT) and best conventional control technology (BCT) to reduce storm water pollution.
5. The federal Clean Water Act and California Water Code require that dischargers obtain coverage under the General Permit prior to commencement of construction activities. The Discharger submitted a NOI for coverage under the General Permit on 10 January 2005 and received confirmation and WDID No. 5S09C332051. This Complaint is for violations of the General Permit after 10 January 2005. However, for historical perspective, the Discharger paid an ACL complaint of \$179,500 on 28 March 2002 for violations of the General Permit for Phase I and II at this site. Since 28 March 2003, substantial improvements to the Storm Water Best Management Practices have been made at the site. Later, in September 2003, Phase III of the project was sold to Newland

Communities Inc. On 5 May 2004 Lafferty Homes Inc. purchased the lots in Phase III from Newland Communities Inc. but failed to file a new NOI until January 10, 2005. During October, November and December of 2004, storm water violations caused El Dorado County to issue stop work orders to the Discharger. In January 2005, El Dorado County referred the Discharger to the Regional Board.

6. The Discharger is alleged to have violated provisions of law for which the Regional Board may impose liability under California Water Code Section 13385(c)(2).

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

“A. DISCHARGE PROHIBITIONS:

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

“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.

“Section A STORM WATER POLLUTION PREVENTION PLAN

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 wet season.

8. Section 301 of the Clean Water Act and Section 13376 of the California Water Code prohibit the discharge of pollutants to surface waters except in compliance with an NPDES permit.

9. The Discharger is alleged to have violated Discharge Prohibition A.3, Special Provisions C.2 and Section A (6) of the General Permit. These violations were caused by the Discharger’s failure to properly stabilize exposed soil slopes and failure to implement and maintain effective Best Management Practices (BMPs). Pursuant to CWC Section 13385 (a)(2), civil liability may be imposed for the following violations:

- On 27 & 28 January 2005 staff inspected the construction site during a light rain and prior to a predicted heavy rain event. During the inspection, staff observed inadequate erosion and

sediment control BMPs at the site, poor maintenance of the BMPs, tracking on the roadways, and poor housekeeping practices in violation of Special Provision C.2 and Section A (6). Staff also observed the discharge of sediment-laden storm water to Spring Creek.

- On 1 February 2005 staff issued a Notice of Violation for failure to provide an effective combination of erosion and sediment control and for the discharge of sediment to waters of the state, which are violations of the General Permit.

Section A.6 of the General Permit states,

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

Discharge Prohibition A.3, states,

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

- On 28 April 2005 and again on 5 May 2005 El Dorado County inspected the site and has provided staff photographic evidence of the discharge of sediment-laden storm water to Spring Creek.

10. Section 13385 of the California Water Code states, in part:

“(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.

“(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.”

11. Pursuant to CWC Section 13385(c), the Discharger has a maximum civil liability of \$40,000 for violating the General Permit on 27 & 28 January 2005, 28 April 2005 and 5 May 2005. The Discharger also failed to install an effective combination of erosion and sediment control BMPs from 10 January 2005 through 5 May 2005 and had documented discharges on 28 April 2005 and 5 May 2005 for a total of 116 days of violations. The maximum civil liability is determined by multiplying the 116 days by \$10,000 per day to obtain \$1,160,000.
12. The Discharger saved approximately \$22,500 by not implementing adequate erosion and sediment control BMPs, for not maintaining those BMPs that were implemented, and for not properly training site employees. This amount is based on \$1,250 per acre, which is one half the minimum cost for erosion and sediment control BMPs. The Discharger did hire an erosion control specialist and did install a substantial amount of erosion and sediment controls BMPs on the 18 acres site, however he failed to fully implement and maintain those BMPs.
13. Regional Board staff spent a total of 20 hours investigating this incident and preparing this Complaint. The total cost for staff time is \$1,600 based on a rate of \$80 per hour.
14. 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 (Public Resources Code Section 21000, et. seq.), in accordance with Title 14 California Code of Regulations, Enforcement Actions by Regulatory Agencies, Section 15321(a)(2).

LAFFERTY HOMES, INC. IS HEREBY GIVEN NOTICE

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **\$40,000**, which includes \$1,600 in staff cost and \$22,500 to recover the economic benefit derived from the acts that constitute violations. The amount of the proposed liability is based on a review of the factors cited in Water Code Section 13385 and the State Water Resources Control Board’s Water Quality Enforcement Policy.
2. A hearing on this matter will be scheduled for the **15/16 September 2005** Regional Board meeting unless the Discharger agrees to waive the hearing and pay the proposed civil liability in full.
3. If a hearing in this matter is held, the Regional 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. If you wish to waive the hearing, you must **within 30 days of this complaint**, sign and return the waiver to the Regional Board’s office with a check in the amount of the civil liability made payable to the “State Water Pollution Cleanup

and Abatement Account ”. Any waiver will not be effective until 30 days from the date of this complaint to allow interested persons to comment on this action.

THOMAS R. PINKOS, Executive Officer

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 Lafferty Homes, Inc. (hereinafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2005-0517 (hereinafter the “Complaint”);
2. I am informed of the right provided by California 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, within ninety (90) days of the date of issuance of the Complaint; and
4. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **forty thousand dollars (\$40,000)** by check, which contains a reference to “ACL Complaint No. R5-2005-0517” and is made payable to the “*State Water Pollution Cleanup and Abatement Account.*”
5. I understand the payment of the above amount constitutes a settlement of violations alleged in the Complaint that will not become final until after a public comment period.
6. I understand that the Executive Officer has complete discretion to modify or terminate this settlement.
7. 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.

(Print Name and Title)

(Signature)

(Date)