

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2007-0526
IN THE MATTER OF

SACRAMENTO REGIONAL COUNTY SANITATION DISTRICT
BRADSHAW INTERCEPTOR SECTION 6B/BRADSHAW ROAD PROJECT
SACRAMENTO COUNTY

This complaint is issued to Sacramento Regional County Sanitation District (hereafter Discharger) based on a finding of violations of Clean Water Act section 301, California Water Code section 13376, and the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002, Order No. 99-08-DWQ, pursuant to the provisions of California Water Code section 13385, which authorizes the imposition of Administrative Civil Liability.

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

1. The Discharger is the owner and developer of the Bradshaw Interceptor 6B project. The project consists of the installation of 12,000 lineal feet of sewer interceptor pipeline, two concrete structures, 18 manholes, and other pipeline appurtenances. The project also includes Bradshaw Road improvements such as road widening, the installation of culverts, roadside ditches, a concrete slab bridge over Elder Creek, a corrugated metal pipeline tunnel, traffic signal improvements, landscaping, and roadway fencing. Run-off from the project discharges to Morrison Creek.
2. Surface water drainage is to Morrison Creek, tributary to Stone Lakes Wildlife Refuge, tributary to the Sacramento River. The beneficial uses of the Sacramento River are municipal and domestic supply; agricultural irrigation and stock watering supply; process and service industrial supply; contact recreation, other non-contact recreation; warm and cold freshwater habitat; warm and cold migration; warm water spawning; wildlife habitat; and Navigation generation, water contact recreation, non-contact water recreation, warm fresh water habitat, and wildlife habitat.
3. On 19 August 1999, the State Water Resources Control Board adopted NPDES General Permit No. CAS000002, Order No. 99-08-DWQ (General Permit), implementing the Waste Discharge Requirements for storm water discharges associated with construction activity.
4. The General Permit 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 Permit and to use best available technology economically achievable (BAT) and best conventional control technology (BCT) to reduce storm water pollution.

5. The Clean Water Act and California Water Code require that dischargers obtain coverage under the General Permit prior to commencement of construction activities. The Discharger obtained coverage under the General Permit and was assigned WDID No. 5S05C325110 on 11 January 2005.
6. The Discharger is alleged to have violated provisions of law for which the Regional Water 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 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.

8. The Discharger is alleged to have violated Discharge Prohibition A.3 and Special Provisions C.2 of the General Permit. These violations were caused by the Discharger's failure to implement an effective combination of sediment and erosion control Best Management Practices (BMPs).
9. Pursuant to California Water Code section 13385 (a)(2), civil liability may be imposed for the following violations:
 - a) On 30 November 2006, Regional Water Board staff inspected the Bradshaw Interceptor Section 6B construction site. The inspection,

initiated in response to an anonymous citizen complaint, was conducted to evaluate compliance with the General Permit. During the inspection, staff observed areas of the site, which lacked an effective combination of erosion and sediment controls.

- b) On 7 and 8 December 2006, the Discharger's contractor applied approximately 600 gallons of Earthbind©, a chemical soil stabilizer, to the already saturated soil on-site.
- c) On 11 December 2006, Water Board staff returned to the site and conducted aerial and ground inspections. Staff again found that the site lacked an effective combination of erosion and sediment controls, and observed the discharge of turbid stormwater to a drainage ditch owned by California Department of Transportation. The turbid run-off drained to a Sacramento County drainage ditch, then discharged to Morrison Creek. Water samples were analyzed for turbidity, which reached 1800 NTU.
- d) Department of Fish and Game (DFG) staff has reviewed the case file and determined that aquatic life in the stream was subjected to multiple pollutant events that involved the discharge of highly turbid flows containing suspended sediment. Earthbind, which is a possibly toxic material, may also have been discharged. DFG staff determined that the discharge was deleterious to aquatic life in waters of the state.

10. On 13 December 2006, a Notice of Violation (NOV) was issued to the Discharger for violations of the General Permit.

12. As discussed above, the Discharger failed to implement BMPs to reduce pollutants in storm water discharges from its construction site to the BAT/BCT performance standard, resulting in the discharge of sediment-laden storm water into nearby surface waters.

13. 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 or fill material permit.

(5) Any requirements of Sections 301, 302, 306, 307, 308, 318, 401, or 405 of the 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 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.”

14. Pursuant to California Water Code section 13385(c), the Discharger has a maximum civil liability of \$9,120,000. The maximum liability is based on twelve (12) days of violation and the number of gallons discharged from the site. The days of violation were 30 November 2006 to 11 December 2006. The gallons discharged from the site were calculated using the Rational Method.
15. The Discharger saved approximately \$83,700 by not implementing adequate erosion and sediment control BMPs. Based on a survey of consultants, approximately \$2000 to \$6000 per acre is needed to provide the minimum erosion and sediment control measures for construction sites depending on the slope and soil type. According to the USDA Soil Survey for Sacramento

County, the soil in the area of the construction is known to be claypan of yellowish red clay loam. These soils stay in suspension in the water column for extended periods of time. Therefore, soil stabilization was required to reduce erosion. The BMPs installed on-site were not adequate. The cost of installing and maintaining an effective combination of erosion and sediment control BMPs at this site was estimated to be \$5,000 per acre. Regional Water Board staff estimated that erosion and sediment control was necessary on 27 acres. The Discharger's consultants stated that they spent \$100,000 on SWPPP compliance for the entire project of approximately 53 acres of disturbed area. Therefore, the Discharger spent approximately \$1900 per acre or saved about \$3100 per acre on necessary BMPs. The economic saving was obtained by multiplying 27 acres by \$3100 per acre and subtracting the amount spent by the Discharger.

16. Regional Water Board staff spent a total of 100 hours investigating this incident and preparing this Complaint. The total cost for staff time is \$8000 based on a rate of \$80 per hour.
17. Issuance of this Administrative Civil Liability Complaint to enforce California Water Code 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).

SACRAMENTO REGIONAL COUNTY SANITATION DISTRICT is hereby given notice

1. The Executive Officer of the Regional Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **\$250,000**, which includes \$8000 in staff cost and \$83,700 to recover the economic benefit derived from the acts that constitute the 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 6 and 7 December 2007 Regional Water 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 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. If you wish to waive the hearing, you must **within 30 days of this complaint**, sign and return the waiver to the Regional Water 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.

PAMELA C. CREEDON, Executive Officer

4 October 2007

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 Sacramento Regional County Sanitation District (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2007-0526 (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 two hundred and fifty thousand dollars (**\$250,000**) by check, which contains a reference to "ACL Complaint No. R5-2007-0526" 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)