

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO.R5-2008-0551

IN THE MATTER OF

PETER G GIAMPAOLI
EPICK HOMES – BELLA VISTA 6, LP
EPICK HOMES, LP
LASSEN VISTA SUBDIVISION
SHASTA COUNTY

This complaint is issued to Peter G Giampaoli, Epick Homes - Bella Vista 6, LP, and Epick Homes, LP (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This complaint is based on findings that the Discharger violated provisions of the federal Clean Water Act (CWA), the CWC, and the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity No. CAS000002, Order No. 99-08-DWQ (General Permit).

The Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) finds the following:

1. On 15 November 2005, Bella Vista, LP submitted a Notice of Intent (NOI) as the owner of the Lassen Vista Subdivision and signed by Pete G. Giampaoli. Lassen Vista Subdivision is a 10.2 acre subdivision construction project in Redding, Shasta County (APN 073-170-026)(hereafter referred to as "the Site"). However, Bella Vista, LP is a legal entity that does not appear to have any connection to the Site. Epick Homes – Bella Vista 6, LP is the owner of the Site, as reflected in the recording documents on file with Shasta County, and the error made in naming Bella Vista, LP in the NOI as an inadvertent oversight by Peter G Giampaoli. Epick Homes, LP is correctly listed on the NOI as the developer of the Site. The Site is being developed into a 22-lot subdivision.
2. Runoff from the Site discharges to an unnamed tributary to the West Fork Stillwater Creek and the Sacramento River, a water of the US.
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 (WDRs) 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 including clearing, grading, and excavation activities file an NOI to obtain coverage under the General Permit, and to implement Best Available Technology Economically Achievable and Best Conventional Control

Technology to reduce storm water pollution to the maximum extent practicable. The Discharger submitted an NOI for coverage under the General Permit on 15 September 2005 and received confirmation in WDID No. 5R45C337787 on 15 November 2005.

5. On 3 January 2008, Regional Water Board staff inspected the Site and found a failure to provide an effective combination of erosion and sediment control, and a failure to install, implement, and maintain storm water construction Best Management Practices (BMPs), resulting in the discharge of sediment-laden storm water to surface waters. On 7 February 2008, staff conducted a follow-up inspection and determined the Discharger had failed to make improvements in the erosion and sediment control BMPs, resulting in further discharges. The violations of the General Permit observed by staff included:
 - a. Failure to implement an effective combination of erosion and sediment control Best Management Practices (Section A: Storm Water Pollution Prevention Plan (SWPPP), No. 6-Erosion Control and No. 8 – Sediment Control).
 - b. Failure to maintain, inspect and repair Best Management Practices (BMPs) (Section A: SWPPP, No. 11-Maintenance, Inspection and Repair).
 - c. Failure to train contractors and/or employees regarding inspections and maintenance of BMPs (Section A: SWPPP, No. 12-Training).
 - d. Failure to maintain control measures identified in the SWPPP (Section A: SWPPP, No 1-Objectives).
 - e. Discharging storm water causing or threatening to cause pollution, contamination, or nuisance (Discharge Prohibition A.3).
 - f. Failure to implement the SWPPP developed for the construction activity, such that storm water discharges and authorized non-storm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable Regional Water Quality Control Board's Basin Plan (Receiving Water Limitation B.2).
 - g. Lack of implementation of controls to reduce pollutants in storm water discharges from their construction sites to the Best Available Technology/Best Conventional Pollutant Control Technology) performance standard (Special Provision C.2).
6. On **26 February 2008** Regional Water Board staff issued a Notice of Violation to the Discharger for failing to provide an effective combination of erosion and sediment controls, for discharging sediment-laden storm water to surface waters, and for the continuing threat of a discharge of sediment to waters of the state.

7. CWC section 13323 states, in part:

“Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.”

8. **Maximum Civil Liability.** Per CWC section 13385(c), the maximum administrative civil liability in this case may be assessed at \$10,000 per violation per day. Thirty-four days elapsed between the 3 January 2008 inspection and the 7 February 2008 follow-up inspection. The follow-up inspection revealed that many of the violations noted in the 3 January 2008 inspection had not been corrected. Although the Regional Water Board may count each discreet violation of the General Stormwater Permit as a separate violation, and may therefore multiply the number of violations by the number of days, for the purposes of this Complaint the maximum penalty is calculated as one violation for each day that elapsed between the two inspections. No runoff calculation was performed that would lead to a per-gallon assessment under CWC section 13385(c)(2). Therefore, the maximum civil liability is three hundred and forty thousand dollars. (\$340,000 = \$10,000 per day × 34 days).

9. **Minimum Civil Liability.** CWC section 13385(e) provides that, at a minimum, civil liability shall be assessed at a level that recovers the economic benefit or savings, if any, derived from the acts that constitute the violations. The Discharger should have redirected laborers to repair and maintain the storm water BMPs, and should have invested more time training contractors and/or employees. The Regional Water Board does not have an accurate calculation as to the economic benefit that inhaled to the Discharger, but estimates that the proposed fine exceeds the economic benefit or savings from the violations.

10. **Water Code Section 13385(e) Factors:**

Factor	Consideration
Nature, Circumstances, Extent, and Gravity of the Violations	Complying with the SWPPP, educating subcontractors, and maintaining BMPs could have prevented the discharge of waste.
Degree of Culpability	The Discharger is responsible for compliance with the General Permit and its own SWPPP.
Voluntary Cleanup Efforts	The Discharger failed to take immediate action to implement an effective combination of BMPs after notification by staff.
Susceptibility to Cleanup or Abatement	Cleanup and abatement occurred only after issuance of the NOV.
Degree of Toxicity of the Discharge	Discharge of sediment to surface waters is detrimental to aquatic species.

Factor	Consideration
Prior History of Violations	Discharger had a previous violations a year earlier, on 2 February 2007, for similar issues.
Economic Benefit or Savings Resulting from the Violation	Substantial. Not redirecting workers to implement effective storm water BMPs resulted in substantial savings.
Ability to Pay	The Discharger has not submitted evidence of inability to pay the penalty or ability to continue in business.
Other Matters that Justice May Require	Staff costs for responding to violation are \$4800.

11. 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).

PETE GIAMPAOLI, EPICK HOMES-BELLA VISTA 6 LP, AND EPICK HOMES, LP ARE HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **twenty thousand dollars (\$20,000)**.
2. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **23/24 October 2008**, unless the Discharger agrees to complete the following **by 28 August 2008**:
 - a) Waive the hearing by completing the attached form and returning it to the Regional Water Board; and
 - b) Pay the proposed civil liability of **twenty thousand dollars (\$20,000)** in full.
3. If a hearing on 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.

Original signed by

JAMES C. PEDRI
Assistant Executive Officer
28 July 2008

Date

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent Peter G Giampaoli, Epick Homes - Bella Vista 6, LP, and Epick Homes, LP (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0551 (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 California Regional Water Quality Control Board, Central Valley Region (Regional 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 civil liability imposed in the amount of **twenty thousand dollars (\$20,000)** by check, which contains a reference to "ACL Complaint No. R5-2008-0551" and is made payable to the "State Water Pollution Cleanup and Abatement Account." The Regional Water Board must receive payment by **28 August 2008** or this matter will be placed on the Board's agenda for consideration as initially proposed in the Complaint.
 - 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 the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Regional Water Board receive new information or comments during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Regional 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**) I certify that the Discharger will promptly engage the Regional 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. I understand that this waiver is a request to delay the hearing so the Discharger and Regional Water Board staff can discuss settlement. It does not constitute the Regional

Water Board's agreement to delay the hearing. A hearing on the matter may be held before the Regional 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 Regional 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.

(Print Name and Title)

(Signature)

(Date