

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VEGION REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO.R5-2008-0564

IN THE MATTER OF

STEVE AND LINDA SCHADE (OWNER)
RON MUNK (OWNER)
3094 CROSSROADS DRIVE
SHASTA COUNTY

This Administrative Civil Liability Complaint (Complaint) is issued to Steve Schade, Linda Schade, Ron Munk, (hereafter "Dischargers") pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL), 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 Dischargers 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).

This Complaint contains allegations of fact and law against Steve Schade, Linda Schade, and Ron Munk. Steve Schade, Linda Schade, Ron Munk, the original owners of the entire project, are responsible for violations that occurred while the parcels were under their ownership and control.

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

1. The Dischargers are the past and present owners, of the 3094 Crossroads Drive development project, (formerly known as Three Shades SDP-14-05 at Crossroads Drive, hereafter referred to as "the Site"), a 3.85-acre, 4-lot commercial development project in Redding, Shasta County (APN's 110-270-023, -024, -025, -026). Initially, all four parcels were owned by Steve Schade, Linda Schade, and/or Ron Munk. Since the initial Notice of Intent (NOI) to obtain coverage under the General Permit was filed on 18 July 2006, three of the parcels (APNs 110-270-024, -025, -026) have been sold to other parties. Steve Schade, Linda Schade, and Ron Munk retained ownership of APN 110-270-023 and are responsible for compliance with the General Permit for that parcel.
2. Runoff from the Site discharges to an unnamed drainage swale that flows into an unnamed tributary of Stillwater Creek, tributary to 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

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 a Notice of Intent (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.
5. On 5 November 2007, the Regional Water Board received a Change of Information Form from Steve Schade and Linda Schade, outlining ownership changes that occurred on 25 October 2006. The General Permit coverage was originally held by Steve Schade and Linda Schade for the entire property, which had consisted of one parcel, which was later subdivided into four separate parcels.
6. On 16 and 19 October 2007, 4 January 2008, 7 and 25 February 2008, Regional Water Board staff inspected the Site and found an ongoing 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 discharges of sediment-laden storm water to surface waters. 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).
7. On **29 October 2007** Regional Water Board staff issued a Notice of Violation to the Dischargers 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.
8. CWC section 13385 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 or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.”*
- ...*
- “(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 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.”*
9. 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.”*
10. 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).

The Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) finds, with respect to **Steve Schade, Linda Schade, and Ron Munk**, the following:

11. Steve Schade, Linda Schade, and Ron Munk formerly owned APNs 110-270-024, 110-270-025, and 110-270-026, and currently own APN 110-270-023, where construction activity subject to the General Permit was or is taking place.
12. On 18 July 2006, the Regional Water Board received Notice of Intent (NOI) documents from Steve Schade, Linda Schade, and Ron Munk to comply with the terms of the General Permit to Discharge Stormwater Associated with Construction Activity (WQ Order No. 99-08-DWQ). At the time, all four parcels were under consolidated ownership.
13. APNs 110-270-024, 110-270-025, and 110-270-026 were subsequently sold to different parties, who then filed NOIs on 29 November 2007.
14. Steve Schade, Linda Schade, and Ron Munk, as the owners of all the parcels until title was transferred, and as the current owners of APN 110-270-024, were responsible for compliance with the terms of the General Permit to Discharge Stormwater Associated with Construction Activity (WQ Order No. 99-08-DWQ) at the time of the 16 October 2007, 19 October 2007, 4 January 2008, 7 February 2008, and 25 February 2008 inspections.
15. Following inspections on 16 October 2007 and 19 October 2007, Steve Schade, Linda Schade, and Ron Munk were issued a Notice of Violation on 29 October 2007 for 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). The inspections noted significant erosion occurring on the Site, lack of effective stormwater controls, and highly turbid and sediment laden water leaving the site.
16. On the 4 January 2008, 7 February 2008, and 25 February 2008 inspections, Regional Water Board staff noted violations of the General Permit that were common to all parcels, including APN 110-270-024. These violations are detailed in Finding #6, *supra*. Steve Schade, Linda Schade, and Ron Munk received notice of these violations in a Notice of Violation letter dated 11 March 2008.
17. **Maximum Civil Liability.** Per CWC section 13385(c), the maximum administrative civil liability for Steve Schade, Linda Schade, and Ron Munk is fifty thousand dollars. This figure is arrived at by multiplying the days of violation (5 days of inspections noting violations, interim dates were not counted) by the maximum statutory penalty under CWC 13385(c) of \$10,000 per violation per day. No runoff calculation was performed that would lead to a per-gallon assessment under CWC section 13385(c)(2).
18. **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.

19. **CWC 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	N/A
Degree of Toxicity of the Discharge	Sediment discharged to surface waters can be detrimental to aquatic species.
Prior History of Violations	A NOV was issued to Steve Schade, Linda Schade, and Ron Munk for previous violations that occurred on the Site in October 2007
Economic Benefit or Savings Resulting from the Violation	Not redirecting workers to implement effective storm water BMPs resulted in cost 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.

STEVE SCHADE, LINDA SCHADE, AND RON MUNK ARE HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that Steve Schade, Linda Schade, and Ron Munk be assessed an Administrative Civil Liability in the amount of **twenty five thousand dollars (\$25,000)**.
2. A hearing on this matter will be held at the Regional Water Board meeting scheduled on 23 / 24 October 2008, unless Steve Schade, Linda Schade, and Ron Munk do either of the following by 27 August 2008:
 - a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Regional Water Board, along with payment for the proposed civil liability of fifty thousand dollars (\$25,000); or

- b) Agrees to enter into settlement discussions with the Regional 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 Regional Water Board.
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

JAMES C. PEDRI
Assistant Executive Officer

18 August 2008

Date

GDD: sae

**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 **Steve Schade, Linda Schade, and Ron Munk** (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0564 (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 five thousand **dollars (\$25,000)** by check, which contains a reference to "ACL Complaint No. R5-2008-0564" and is made payable to the "*State Water Pollution Cleanup and Abatement Account.*" Payment must be received by the Regional Water Board by **27 August 2008** or this matter will be placed on the Regional Water Board's agenda for adoption 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

GDD: sae
8/18/2008