

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2017-0115

MANDATORY PENALTY
IN THE MATTER OF

ORIGINAL SIXTEEN TO ONE MINE, INC.
SIXTEEN TO ONE MINE
SIERRA COUNTY

This Administrative Civil Liability Order (Order) is issued to Original Sixteen to One Mine, Inc. (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385. This Order is based on allegations that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2015-0002 (NPDES CA0081809).

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

1. The Discharger owns and operates the Sixteen to One Mine (Facility), an underground hard rock gold mine. The Facility discharges mine drainage via the 21 Tunnel Portal to Kanaka Creek, tributary to Middle Yuba River, Yuba River, Feather River, and Sacramento River, a water of the United States in the Sacramento Hydrologic Basin.
2. Discharges from the Facility were regulated by the Central Valley Water Board under Waste Discharge Requirements (WDRs) Order R5-2002-0043, which was adopted on 1 March 2002 and amended on 30 April 2003.
3. On 5 February 2015, the Board adopted WDRs Order R5-2015-0002 (NPDES CA0081809), which contained new requirements and superseded Order R5-2002-0043 except for enforcement purposes. WDRs Order R5-2015-0002 became effective on 16 April 2015. A minor modification letter was issued on 10 September 2015 to correct an error in the monitoring report due dates.
4. On 17 April 2015, the Board issued Time Schedule Order (TSO) R5-2015-0035 pursuant to Water Code section 13300. When the discharge complies with the interim effluent limits in the TSO for electrical conductivity, arsenic, antimony, cadmium, copper, iron, lead, manganese, and nickel, then the Discharger is protected from mandatory minimum penalties (MMPs) for these constituents. However, if the discharge exceeds the interim limits, then protection is lost and the Discharger is subject to MMPs. The interim limits are in effect until 16 April 2020. The Order considers the protection from MMPs provided by the TSO.

PREVIOUS ENFORCEMENT ACTIONS

5. Between February 2006 and January 2007, the Discharger did not submit twelve monitoring reports as required by WDRs R5-2002-0043. Failure to submit these monitoring reports resulted in 78 serious violations of Water Code sections 13385 and 13385.1. The Central Valley Water Board referred these violations to the Attorney General whom ultimately filed a lawsuit against the Discharger.
6. On 11 February 2015, a Stipulated Final Judgment was entered into by and between the State of California, ex. rel. California Regional Water Quality Control Board, Central Valley Region, and Original Sixteen to One Mine, Inc. (Case No. 7019) to resolve the outstanding violations. The

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settlement required the Discharger to pay \$237,083 in monthly installments. The Discharger is currently paying the monthly installments and has made each payment on time and in accordance with the agreed upon payment schedule. Additionally, the Discharger agreed to file a Report of Waste Discharge and obtain a NPDES permit, pursuant to Water Code sections 13263 and 13377 covering discharges to Kanaka Creek from Sixteen to One Mine and agreed to fully comply with each and every term of the NPDES permit.

7. On 29 April 2016, the Central Valley Water Board adopted Administrative Civil Liability (ACL) Order R5-2016-0021. The ACL Order charged the Discharger with civil liability in the amount of \$6,000 which represented the sum of the statutory MMPs for effluent limitation violations that occurred at the Facility from 16 April 2015 through 30 September 2015. The Discharger was invoiced on 28 April 2016 and was to pay the \$6,000 civil liability in full by 28 May 2016. As of the date of Administrative Civil Liability Complaint R5-2017-0549, the Discharger had paid \$1,000 of the civil liability; therefore, a \$5,000 balance is outstanding.

CURRENT ENFORCEMENT ACTION

8. This Order addresses administrative civil liability for effluent violations that occurred during the period from 1 October 2015 through 31 December 2016. These violations are specifically identified in Attachment A to this Order as subject to MMPs. Attachment A to this Order is attached hereto and incorporated herein by this reference.
9. On 2 February 2017, Central Valley Water Board staff issued a draft Record of Violations (ROV) to the Discharger for the period from 1 October 2015 through 30 September 2016. The Discharger responded on 1 March 2017 by phone and requested a meeting to discuss the ROV. Board staff met with the Discharger on 27 March 2017 and discussed the effluent violations and MMPs associated with the violations. The Discharger did not provide any information to show that the laboratory results were in error or that the violations should otherwise be dismissed; therefore, MMPs must be assessed. This Order extends the period through 31 December 2016; two copper violations subject to MMPs were identified in addition to those cited in the ROV.
10. Water Code section 13385 subdivision (h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code section 13385, subdivision (h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

Water Code section 13385, subdivision (h)(2) states:

For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

Water Code section 13385 subdivision (i)(1) states, in part:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

11. Water Code 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.

12. Water Code section 13385, subdivision (j) exempts certain violations from the mandatory minimum penalties, and states, in relevant part:

Subdivisions (h) and (i) do not apply to any of the following:

- 3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308 if all of the following requirements are met:
 - C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible....For the purposes of this subdivision, the time schedule may not exceed five years in length The interim requirements shall include both of the following:
 - i) Effluent limitations for the pollutant or pollutants of concern.
 - ii) Actions and milestones leading to compliance with the effluent limitation.

13. WDRs Order R5-2015-0002 Effluent Limitations IV.A.1.a., includes, in part, the following effluent limitations:

a. The Discharger shall maintain compliance with the final effluent limitations...

Table 4. Effluent Limitation

| Parameter | Units | Effluent Limitation | |
|------------------------|-------|---------------------|---------------|
| | | Average Monthly | Maximum Daily |
| Total Suspended Solids | mg/L | 20 | 30 |
| Antimony | µg/L | 6.0 | 12 |
| Arsenic | µg/L | 10 | 20 |
| Cadmium | µg/L | 0.85 | 1.7 |
| Copper | µg/L | 3.1 | 6.3 |

| Parameter | Units | Effluent Limitation | |
|-----------|-------|---------------------|---------------|
| | | Average Monthly | Maximum Daily |
| Nickel | µg/L | 21 | 43 |

14. WDRs Order R5-2015-0002, Effluent Limitations IV. A.1.e. include, in part, the following effluent limitations:

e. Iron, Total Recoverable. For a calendar year, the annual average effluent concentration shall not exceed 300 µg/L.

15. TSO R5-2015-0035, Order section 2, states in part:

The following interim effluent limitations shall be effective **immediately and until 16 April 2020**.

| Parameter | Units | Interim Effluent Limitation | |
|-----------|-------|---|---|
| | | Interim Average Monthly Effluent Limitation | Interim Maximum Daily Effluent Limitation |
| Arsenic | µg/L | 700 | 1000 |
| Antimony | µg/L | 35 | 50 |
| Cadmium | µg/L | 30 | 50 |
| Copper | µg/L | 10 | 15 |
| Iron | µg/L | 2100 | 2500 |
| Nickel | µg/L | 150 | 200 |

16. TSO R5-2015-0035 contains interim effluent limitations for arsenic, antimony, cadmium, copper, iron, and nickel; however, as shown in Attachment A, the Discharger exceeded the interim effluent limit and therefore Water Code section 13385, subdivision (j), does not exempt those particular violations from MMPs.

17. According to the Discharger’s self-monitoring reports, the Discharger committed two (2) serious Group I violations, nine (9) serious Group II violations, and one (1) non-serious violation. The one (1) non-serious violation is not subject to MMPs, as shown in Attachment A. Violations are defined as serious and are subject to MMPs under WDRs Order R5-2015-0002 because the measured concentration of Group I constituents exceeded maximum prescribed levels by 40 percent or more and Group II constituents exceeded maximum prescribed levels by 20 percent or more. The mandatory minimum penalty for these violations is **thirty three thousand dollars (\$33,000)**. As stated herein, a detailed list of the cited effluent violations is included in Attachment A. This Order addresses administrative civil liability only for violations that are specifically identified in Attachment A as subject to mandatory minimum penalties.

18. Notwithstanding the issuance of this Order, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger’s WDRs and/or TSO for which penalties have not yet been assessed or for violations that may subsequently occur.

19. Issuance of this Administrative Civil Liability Order to enforce Water Code 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).

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IT IS HEREBY ORDERED that:

1. Pursuant to Water Code section 13385, the Discharger shall be assessed an Administrative Civil Liability in the amount of thirty three thousand dollars (\$33,000), as the mandatory minimum penalty for the violations found herein to have been committed by the Discharger.
2. Payment shall be made no later than thirty (30) days from the date of issuance of this Order by check payable to the State Water Pollution Cleanup and Abatement Account, and shall have the number of this Order written upon it.
3. In the event that the Discharger fails to comply with the requirements of this Order, this matter may be referred to the Office of the Attorney General or a debt collection agency for enforcement of the terms of this Order.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality/ or will be provided upon request.

I, Pamela C. Creedon, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region on 8 December 2017.

Original Signed by _____
PAMELA C. CREEDON, Executive Officer

Attachment A: Record of Violations

**ATTACHMENT A TO ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2017-0115
MANDATORY MINIMUM PENALTIES**

**Original Sixteen to One Mine, Inc.
Sixteen to One Mine**

RECORD OF VIOLATIONS (1 October 2015 – 31 December 2016) MANDATORY MINIMUM PENALTIES
(Data reported under Monitoring and Reporting Program R5-2015-0002 and TSO R5-2015-0035)

| | <u>Date</u> | <u>Parameter</u> | <u>Units</u> | <u>WDRs Limit</u> | <u>TSO Limit</u> | <u>Measured</u> | <u>Period</u> | <u>Remarks</u> | <u>CIWQS</u> |
|----|-------------|------------------|--------------|-----------------------|----------------------|-----------------|-----------------|----------------|--------------|
| * | 30-Apr-15 | Antimony | µg/L | 6 | 35 | 62.3 | Monthly Average | 2 | 998936 |
| 1 | 17-Dec-15 | TSS | mg/L | 30 | NA | 41 | Daily Maximum | 3 | 1003210 |
| 2 | 31-Dec-15 | Arsenic | µg/L | 10 | 700 | 883 | Monthly Average | 2 | 1008352 |
| 3 | 31-Dec-15 | Antimony | µg/L | 6 | 35 | 41.1 | Monthly Average | 2 | 1008346 |
| 4 | 31-Dec-15 | TSS | mg/L | 20 | NA | 41 | Monthly Average | 1 | 1003251 |
| 5 | 31-Dec-15 | Cadmium | µg/L | 0.85 | 30 | 30.2 | Monthly Average | 2 | 1008347 |
| 6 | 31-Dec-15 | Iron | µg/L | 300 | † | 486 | Annual Average | 1 | 1008349 |
| 7 | 31-Jul-16 | Antimony | µg/L | 6 | 35 | 49.3 | Monthly Average | 2 | 1016605 |
| 8 | 29-Sep-16 | Antimony | µg/L | 12 | 50 | 60 | Daily Maximum | 2 | 1016612 |
| 9 | 30-Sep-16 | Antimony | µg/L | 6 | 35 | 60 | Monthly Average | 2 | 1016606 |
| 10 | 30-Sep-16 | Nickel | µg/L | 21 | 150 | 153 | Monthly Average | 2 | 1016611 |
| 11 | 13-Dec-16 | Copper | µg/L | 6.3 | 15 | 115.9 | Daily Maximum | 2 | 1021050 |
| 12 | 31-Dec-16 | Copper | µg/L | 3.1 | 10 | 115.9 | Monthly Average | 2 | 1021051 |

* Supporting violations addressed in ACLO R5-2016-0021.

† Time Schedule Order (TSO) R5-2015-0035 contains interim iron limitations based on a maximum daily effluent limit (2500 µg/L) and an average monthly effluent limit (2100 µg/L) averaging period. Protection from MMPs was lost for iron because the effluent concentration exceeded both of the TSO's effluent limitations in December 2015 with a sample concentration of 3,050 µg/L. Two additional iron samples were collected during 2015, which were non-detect (ND) and 486 µg/L. Since a ND value exists in the data set, the annual average is calculated by taking the median value of the three results, which is 486 µg/L.

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violation falls within the first three violations in a 180-day period, thus is not subject to mandatory minimum penalties. Penalties that may be assessed for this violation are discretionary. This violation is not addressed or resolved in this ROV.
4. Non-serious violation subject to mandatory minimum penalties.

| | | |
|--|--|------------------------|
| | <u>VIOLATIONS AS OF:</u> | <u>12/31/16</u> |
| | Group I Serious Violations: | 2 |
| | Group II Serious Violations: | 9 |
| | Non-Serious Violations Not Subject to MMPs: | 1 |
| | <u>Non-Serious Violations Subject to MMPs:</u> | <u>0</u> |
| | Total Violations Subject to MMPs: | 11 |

**Mandatory Minimum Penalty = (2 Group I Serious Violations) + (9 Group II Serious Violations) x \$3,000
= \$33,000**