

**COMPLAINT NO. R2-2008-0002**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**COMPLAINT NO. R2-2008-0002**

**ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF  
DR. COLLIN MBANUGO  
FOR VIOLATIONS OF CALIFORNIA WATER CODE  
SECTION 13267  
AT THE LEONA HEIGHTS SULFUR MINE  
OAKLAND, ALAMEDA COUNTY**

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the Water Board), hereby gives notice that:

1. Dr. Collin Mbanugo (the Discharger) has violated provisions of law for which the Water Board may impose civil liability pursuant to California Water Code Sections 13268(a)(1) and (b)(1) and 13323.
2. The Discharger has violated Section 13267 by failing to submit technical reports required in a letter from the Executive Officer dated December 16, 2005.
3. Unless waived, a hearing on this complaint will be held before the Water Board as set forth below on September 10, 2008, at the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California. You or your representative will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of the civil liability. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date. The deadline to submit all evidence or comments concerning this complaint is August 11, 2008. The Water Board will not consider any evidence or comments not submitted by this deadline.
4. At the hearing, the Water Board will consider whether to affirm, reject, or modify the proposed civil liability, to refer the matter to the Attorney General for recovery of judicial liability, or take other enforcement actions.

**ALLEGATIONS**

5. This complaint is based on the following facts:
  - a. Dr. Mbanugo is the current owner of the Leona Heights Sulfur Mine, a two-acre abandoned mining site located in the Oakland Hills near the junction of Interstate 580 and State Highway 13. Water quality at the site is impacted by acid mine runoff, which discharges into a creek that flows through waste rock piles left behind when the mine was abandoned in the late 1920s. Flows passing through the site follow a natural drainage channel of several hundred feet and then enter a storm drain. The

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storm drain discharges to Lake Aliso on the Mills College Campus, and ultimately discharges to San Leandro Bay via another Storm Drain System. Site remediation was required under Cleanup and Abatement Order No. 98-004, which this Board adopted on January 30, 1998.

- b. The Discharger purchased the property on November 29, 2001. Water Board staff met with the Discharger shortly thereafter. The Discharger indicated that he was aware of the discharges and planned to remediate the site. The Board amended the 1998 Order on April 14, 2003 by adopting Order No. R2-2003-0028 (hereafter referred to as “the CAO”), which identified Dr. Mbanugo as the current owner and added him to the list of Dischargers of the Leona Heights Sulfur Mine.
- c. On December 16, 2005, the Executive Officer sent a letter to the Discharger pursuant to Water Code Section 13267. This Section 13267 letter had two purposes:
  - 1) The letter approved a revised scope of work and schedule that had been proposed by the Discharger in a work plan submitted on October 28, 2005. This scope of work was required for compliance with the CAO.
  - 2) The letter required the Discharger to submit monthly progress reports documenting work completed on the project. The progress reports were to be submitted by the last day of each month, beginning in December 2005. Submittal of progress reports was to continue until the Discharger had fully complied with the requirements of the CAO.
- d. The Discharger was out of compliance with the CAO at the time the Section 13267 letter was issued. Enforcement action was not taken at that time because technical comments received from an outside permitting agency (the City of Oakland) necessitated substantive changes to the Discharger’s corrective action plan. The Discharger demonstrated a willingness to make beneficial revisions to the corrective action plan, provided additional time was allowed.
- e. The Section 13267 letter approved a revised implementation schedule, but required the submittal of monthly progress reports because the Discharger previously had not been diligent in completing tasks required for compliance with the CAO. Prior work had been intermittent with a history of missed deadlines, resulting in the issuance of a Notice of Violation from Water Board staff on October 6, 2005. The progress reports were required as a means to substantiate the Discharger’s compliance with the CAO.
- f. The Discharger has not complied with the December 16, 2005 letter. Specifically, the Discharger has stopped submitting the monthly progress reports required by the letter. Furthermore, the Discharger has not completed project tasks according to the schedule that was approved in the letter.
- g. Monthly progress reports were received from the Discharger in January, February, April, May, September, October, and November of 2006, and in February and May of

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2007. No further reports have been received since May 2007. The Discharger has provided no indication that any further work has been performed to comply with the CAO.

- h. Two additional Notices of Violation were issued to the Discharger on March 10, 2006 and July 17, 2006, in an attempt to gain compliance with the December 16, 2005 letter.
6. This Administrative Civil Liability is being issued for the Discharger's failure to submit monthly progress reports required in the Section 13267 letter issued December 16, 2005. For violating CWC Section 13267, the Water Board may administratively impose civil liability pursuant to CWC Section 13268(a)(1) and (b)(1) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
7. In determining the amount of civil liability to be assessed to the Discharger, the Water Board must take into consideration the factors described in CWC Section 13327. These factors and considerations are as follows:

- a. Nature, Circumstances, Extent and Gravity of the Violations:

Compliance with the December 16, 2005 request for technical reports under CWC Section 13267 is necessary so that Water Board staff can monitor the Discharger's progress and efforts toward compliance with the CAO. Failure to provide those reports deprives the Water Board of information related to the Discharger's progress in complying with the CAO. The progress reports are an integral part of the CAO compliance. Failure to submit the reports is reflective of the Discharger's failure to comply with the scope of work and schedule approved in the December 16, 2005 letter. The failure to comply with the approved scope of work has allowed an ongoing discharge of low pH water contaminated with metals into waters of the State to continue unabated.

- b. Susceptibility of the Discharge to Cleanup:

The discharges from the mine can be cleaned up by means of implementation of a corrective action plan submitted by the Discharger, which was approved by Water Board staff on July 5, 2006. If implemented, the corrective actions will significantly reduce the seriously detrimental effects of the discharge in an economically achievable manner. However, the corrective actions have not been implemented.

- c. Degree of Toxicity of the Discharge:

The waste rock at the site contains elevated concentrations of sulfur and metals such as iron, lead, copper, and arsenic. The waste rock piles are more porous than the native bedrock. This allows water to migrate easily through the material. Contact between water and the sulfur-rich waste rock, primarily during the rainy season, causes sulfur to be dissolved, promoting the formation of sulfuric acid within the

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waste rock piles. Discharge of acidic water from the waste rock pile, known as acid mine runoff, is indicated at the site by the characteristic yellow coloration in the streambed. Creek sampling has shown very acidic conditions in the creek, with the pH at time dropping below 3. The low pH, in turn, increases the solubility of metals present in the waste rock, resulting in high metals concentrations in the creek. Water quality in the creek is impacted visually and chemically for a considerable distance downstream from the site. This water is toxic to aquatic species living in the creek at the site and downstream of the discharge. Beneficial uses of the creek and other water bodies downstream from the site are seriously compromised as a direct result of the discharge.

d. Ability to Pay and Ability to Continue in Business:

The Discharger owns a number of properties located in Oakland and Emeryville. Although some of the properties are undeveloped, they are zoned for residential development. The assessed value of those properties (which may not reflect their market value, which is likely higher) is in excess of \$1.5 million. The property owner has not provided any evidence of inability to pay.

e. Voluntary Cleanup Efforts Undertaken:

The discharger has not voluntarily undertaken cleanup activities. The Discharger is required under the CAO to implement corrective actions.

f. Prior History of Violations:

Water Board staff has issued three Notices of Violation (NOV) to the Discharger in an attempt to gain compliance with the December 16, 2005 letter and the CAO. These NOV letters were issued on October 6, 2005; March 10, 2006; and July 17, 2006.

g. Degree of Culpability:

The Discharger is solely responsible for submission of monthly progress reports to demonstrate compliance with the 13267 letter and the CAO. The Discharger has not submitted a progress report since May 2007 despite numerous requests by Water Board staff that he comply.

h. Economic Savings:

The Discharger has achieved modest economic savings by not preparing and submitting the technical reports required under CWC Section 13267. The Discharger has achieved significantly greater economic savings by not performing the corrective actions required to comply with the Section 13267 letter and the CAO.

i. Other Matters As Justice May Require:

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The Discharger's property is a significant source of pollutants to the environment. The toxicity of the pollutants emanating from the property has impacted beneficial uses downstream, including the inability to sustain aquatic life. Although he initially demonstrated cooperation after purchasing the property, the Discharger has terminated all efforts to obtain necessary permits and has cut off communication with the Water Board staff by failing to submit the required reports. The Discharger has not implemented any corrective actions to comply with the CAO for more than four years or to comply with the December 16, 2005 letter requiring progress reports for more than a year. The Discharger's willful refusal to comply with the Water Board's duly-issued CAO and reporting requirements continues to allow the prolonged discharge of harmful material into the environment. This enforcement action is necessary to compel the Discharger to comply with the CAO and reporting requirements.

8. The maximum civil liability that could be imposed for this matter is calculated based on the number of days the required technical reports are overdue. For all of the reports missing to date (June 10, 2008):

The report due on May 31, 2007 is 376 days late.  
The report due on June 30, 2007 is 346 days late.  
The report due on July 31, 2007 is 315 days late.  
The report due on August 31, 2007 is 284 days late.  
The report due on September 30, 2007 is 254 days late.  
The report due on October 31, 2007 is 223 days late.  
The report due on November 30, 2007 is 193 days late.  
The report due on December 31, 2007 is 162 days late.  
The report due on January 31, 2008 is 131 days late.  
The report due on February 29, 2008 is 102 days late.  
The report due on March 31, 2008 is 71 days late.  
The report due on April 30, 2008 is 41 days late  
The report due on May 31, 2008 is 10 days late.

There are a total of 2,508 days of late reports, for which the Water Board could assess a total liability of \$2,508,000. The Executive Officer proposes that civil liability should be imposed on the Discharger in the amount of \$200,000 for the violations cited above, which is due as provided below.

9. This action is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.

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10. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by (a) paying the civil liability in full or (b) undertaking an approved supplemental environmental project in an amount not to exceed \$100,000 and paying the remainder of the civil liability, all in accordance with the procedures and limitations set forth in the attached waiver.

July 9, 2008

Date

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Dyan C. Whyte  
Assistant Executive Officer

Attachment: Waiver of Hearing Form

WAIVER

If you waive your right to a hearing, the matter will be included on the agenda of a Water Board meeting but there will be no hearing on the matter, unless a) the Water Board staff receives significant public comment during the comment period, or b) the Water Board determines it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Water Board holds a hearing under either of the above circumstances, you will have a right to testify at the hearing notwithstanding your waiver. **Your waiver is due no later than August 11, 2008, 5 p.m.**

- Waiver of the right to a hearing and agreement to make payment in full.  
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in this Complaint and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the Water Board meeting for which this matter is placed on the agenda. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Assistant Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability.
  
- Waiver of right to a hearing and agree to make payment and undertake an SEP.  
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in this Complaint, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to the amount identified in Finding 10 of this Complaint and paying the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the Water Board meeting for which this matter is placed on the agenda. The SEP proposal shall be submitted no later than the due date for this waiver, above. I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Assistant Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Assistant Executive Officer, I agree to pay the suspended penalty amount within 30 days of the date of the letter from the Assistant Executive Officer rejecting the proposed/revised SEP. I also understand that I am giving up my right to argue against the allegations made by the Assistant Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Assistant Executive Officer. I understand failure to adequately

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complete the approved SEP will require immediate payment of the suspended liability to the CAA.

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Name (print)

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Signature

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Title/Organization

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Date