

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2007-0504

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

LEMKE CONSTRUCTION INC.
BRIDLEWOOD SUBDIVISION
CALAVERAS COUNTY

This complaint is issued to Lemke Construction Inc. (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 an 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 Bridlewood Subdivision, a 61-acre construction project in Calaveras County. Much of the subdivision has been completed, with a few vacant lots remaining. The portion of the site currently under construction consists of a horse barn, stable facilities and accompanying roads. Runoff from the site discharges to an unnamed tributary to Black Creek.
2. Black Creek is a tributary to Lake Tulloch. Lake Tulloch is a tributary to the Stanislaus River. The existing beneficial uses of Lake Tulloch are agricultural supply, hydropower generation, water contact recreation, non-contact water recreation, warm fresh water habitat, and wildlife habitat. Lake Tulloch is also listed as a potential municipal and domestic water supply source.
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 21 November 2003.

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 prohibits 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 4 January 2007, Regional Water Board staff inspected the Discharger’s construction site and observed the lack of an effective combination of sediment and erosion control Best Management Practices (BMPs) throughout the horse barn and surrounding construction area (approximately 1.25 acres). Staff further observed a sediment-laden storm water discharge from the construction site flowing into an unnamed tributary to Black Creek. Staff obtained samples of the discharge from the Discharger’s site and at the nearby main channel of Black Creek. The samples were analyzed for turbidity with a Hach 2100 Turbidimeter. The turbidity of the discharge

was 1670 NTUs, and the turbidity of Black Creek was 30 NTUs. The Storm Water Pollution Prevention Plan (SWPPP) could not be located during the site inspection.

- b. On 8 January 2007, a Notice of Violation (NOV) was issued to the Discharger for violations of the General Permit.
9. 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.
10. 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 and fill material permit.*
- *****
- (5) Any requirements of Sections 301, 302, 306, 307, 308, 318, or 405 of the Federal Water Pollution Control 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... 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.”*
10. Pursuant to California Water Code Section 13385(c), the Discharger has a maximum civil liability of \$122,520. The maximum liability is based on one day of violation and the

number of gallons discharged from the site. The day of violation was 4 January 2007. The gallons discharged from the site were calculated using the rational method.

11. The Discharger saved approximately \$3,700 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. The construction site has steep slopes, and the soil erosion potential is moderate to high; therefore, an effective combination of both erosion and sediment control BMPs are required to protect the site. Since there were no effective BMPs installed at the site, the cost of installing and maintaining an effective combination of erosion and sediment control BMPs at this site was estimated to be \$3000 per acre. This is a very conservative estimate given the site's slopes and soil conditions. Regional Water Board staff conservatively estimated that erosion and sediment control was necessary on 1.25 acres. The economic savings was obtained by multiplying 1.25 acres by \$3000 per acre.
12. Regional Water Board staff spent a total of 50 hours investigating this incident and preparing this Complaint. The total cost for staff time is \$4000 based on a rate of \$80 per hour.
13. 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).

LEMKE CONSTRUCTION INC. 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 **\$25,000** which includes \$4000 in staff cost and \$3700 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 **3/4 May 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

21 February 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 Lemke Construction Inc. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2007-0504 (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 **twenty five thousand dollars (\$25,000)** by check, which contains a reference to "ACL Complaint No. R5-2007-0504" 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)