

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2006-0506

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

SILVERWING DEVELOPMENT
PORTOFINO SUBDIVISION
SOLANO COUNTY

This complaint is issued to Silverwing Development (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 Assistant Executive Officer of the Regional Water Quality Control Board, Central Valley Region, (Regional 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 Portifino Subdivision, an 18.3-acre construction project in Solano County. Runoff from the site discharges to the City of Vacaville's storm drain system, which discharges into Alamo Creek.
2. Alamo Creek is a tributary to Sacramento-San Joaquin Delta. The existing beneficial uses of Alamo Creek are municipal and domestic supply; agriculture; industry; recreation; freshwater habitat; warm and cold water migration; spawning; wildlife habitat; and navigation.
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 utilize 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. On 19 January 2005, the Discharger obtained coverage under the General Permit and was assigned WDID No. 5S48C332000.
6. The Discharger is alleged to have violated provisions of law for which the Regional 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:

2. Discharges of material other than storm water which are not otherwise authorized by an NPDES permit to a separate storm sewer system (MS4) or waters of the nation are prohibited, except as allowed in Special Provisions for Construction Activity, C.3.

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 prohibit 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.2 and A.3 and Special Provisions C.2 of the General Permit. These violations were caused by the Discharger’s failure to properly dewater the construction site. Pursuant to California Water Code Section 13385 (a)(2), civil liability may be imposed for the following violations:

- On 19 January 2006, Regional Board staff inspected the site and noted violations of the General Permit. Staff observed on-site personnel pumping ponded water from a lime treated roadway directly into the storm drain system. Since the pumping had taken place for an unknown amount of time, the volume of water discharged could not be accurately determined. On-site personnel had not determined the pH of the water or provided any treatment to reduce the pH prior to discharge into the storm drain system. During the inspection, the pump operator shut down the pump, went to a pool supply store, purchased pH test strips and sampled the ponded water. According to the contractor, the test strip showed the pH of the water to be above 8.5 and the Basin Plan objective for pH. Regional Board staff obtained two samples from this site. The first sample was obtained from the ponded area being pumped, and the second sample was obtained from another ponded area along the treated roadway (directly across the street from the first area). Both the samples were tested and found to have pH readings above 11.

- The discharge of lime contaminated storm water is a violation of Discharge Prohibition A.2 and A.3 and Special Provisions C.2 of the General Permit. Lime in the discharge is an unauthorized non-storm water constituent and violates Discharge Prohibition A.2. The high pH discharge could cause or threaten to cause pollution, contamination, or nuisance in violation of Discharge Prohibition A.3. The discharge of lime contaminated storm water without treatment violates Special Provisions C.2, which requires Dischargers to implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT performance standard.

9. 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 \$10,000 for the day of violation noted by Regional Board staff. Gallons discharged from the site were not calculated because of inadequate information but would have increased the maximum civil liability.

11. The Discharger saved approximately \$4,000 by not implementing an adequate dewatering system designed to reduce the pH of the storm water prior to discharge. This amount is based on the typical cost to mobilize and run a treatment system designed to reduce the pH of storm water on a small site.
12. Regional Board staff spent a total of 40 hours investigating this incident and preparing this Complaint. The total cost for staff time is \$3,200 based on a rate of \$80 per hour.
13. The minimum civil liability is \$7,200 or the sum of economic savings gained by the Discharger by not providing a treatment system (\$4,000) and the staff costs for developing this complaint (\$3,200).
14. 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).

SILVERWING DEVELOPMENT is hereby given notice

1. The Assistant Executive Officer of the Regional Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **\$10,000** which includes \$3,200 in staff cost and \$4,000 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 **4/5 May 2006** Regional 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 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 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.

KENNETH D. LANDAU, Assistant Executive Officer

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 the Silverwing Development (hereinafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2006-0506 (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 **ten thousand dollars (\$10,000)** by check, which contains a reference to “ACL Complaint No. R5-2006-0506” 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 Assistant 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)