

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R5-2005-0120
IN THE MATTER OF

CRV ENTERPRISES, INC.
GOLD CREEK ESTATES
CALAVERAS COUNTY

This ORDER is issued to CRV Enterprises, Inc. (hereafter Discharger) based on a finding of violations of Clean Water Act Section 301, California Water Code (CWC) Section 13376, and the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 Order No. 99-08-DWQ, pursuant to the provisions of Section 13385 of the CWC, which authorizes the imposition of an Administrative Civil Liability.

The Central Valley Regional Water Quality Control Board, Central Valley Region, (hereafter 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 Gold Creek Estates, an approximately 80-acre construction project in Calaveras County. The site is being developed into residential homes. Runoff from the site discharges to Cosgrove Creek.
2. The existing beneficial uses of Cosgrove Creek are municipal domestic supply, irrigation, stock watering, warm fresh water contact, cold fresh water contact, warm fish migration, cold fish migration, warm fish spawning, cold fish spawning, and wildlife habitat. Cosgrove Creek is a tributary of the Calaveras River. The Calaveras River is also listed as a potential industrial processing and industrial service supply water source.
3. On 19 August 1999, the State Water Resources Control Board adopted NPDES General Permit No. CAS000002, Order No. 99-08-DWQ, implementing the Waste Discharge Requirements (WDRs) for storm water discharges associated with construction activity.
4. General Order No. 99-08 DWQ 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 NPDES 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. The Discharger obtained coverage and WDID No. 5S05C321339 on 1 May 2003.

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:

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 A STORM WATER POLLUTION PREVENTION PLAN

6. Erosion Control
... At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the wet season.

8. 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.

9. The following event pertains to the history of the site:

On 3 December 2004, the Discharger received a rainy season preparation reminder from Regional Board staff that included the reminder to prevent erosion by stabilizing all disturbed soil at the site.

10. The Discharger is alleged to have violated Discharge Prohibition A.3, Special Provisions C.2 and Section A (6) of the General Permit. These violations were caused by the Discharger’s failure to properly stabilize exposed soil slopes and failure to implement and

maintain effective Best Management Practices (BMPs). Pursuant to CWC Section 13385 (a)(2), civil liability may be imposed for the following violations:

An inspection on 13 January 2005 found serious violations of the General Permit. These violations included:

- Evidence of discharge of sediment to the storm drain system – Sediment laden storm water was found ponded around a drain inlet, indicating that during the previous rainstorm there was a discharge of sediment laden water. Further evidence of a discharge was demonstrated at other drain inlets where most of a street was covered with sediment. Some sediment laden water was still discharging to the storm drain system at the time of the inspection.
- Failure to implement an effective combination of erosion and sediment control BMPs – Sediment control BMPs were poorly maintained and likely contributed to the discharge of sediment to the storm drain system. Sediment control was limited to a few fiber rolls installed behind the curb, rock bags or fiber rolls adjacent to the drain inlets, and drain inlet filter bags in the drain inlets. These poorly maintained fiber rolls behind the curb were likely overtopped and would have been largely ineffective during previous rain events. No erosion control BMPs were found onsite during the inspection.
- Non-storm water was discharging to the storm water collection system – Non-storm water, as indicated by a stream of white to grey liquid, was discharging to a drain inlet. This flow was distinct from the turbid storm water runoff. A bottle of Mapelastic was found nearby and was suspected to be the cause of this discharge. Mapelastic is a waterproofing and crack isolation membrane material. According to the bottle, the product is a potential skin and eye irritant and harmful or fatal if swallowed.
- Sediment was discharged to a wetland preservation area – A wetland area in the center of the project was not protected, and as a result, sediment was discharged to the wetland area. No signs, fencing or other warnings were present to aid contractors to avoid discharge to the wetland areas during site grading work.
- A concrete washout area was poorly constructed and maintained – Concrete washouts are an important BMP for the temporary disposal of concrete washwater and to keep this material out of surface waters. The washout area was in very poor condition at the time of inspection. Fiber rolls were not maintained, the washout access was very muddy and plastic sheeting was in disrepair.

On 21 January 2005, Regional Board staff issued a Notice of Violation based on the violations observed during the 13 January inspection. The Discharger responded in writing that four acres were hydroseeded, all drain inlets were cleaned, decomposed or

damaged straw wattles had been replaced, and the SWPPP was being revised and updated.

On 27 January the site was inspected to determine if effective BMPs had been added and to assist Calaveras County in assessing the status of the site. The inspection found that BMPs had been added throughout the lower portion of the site, and that drain inlets had been cleaned; however, the SWPPP was still not complete.

On 16 February the site was inspected during a rain event to evaluate compliance with the General Permit. At this time, a significant number of storm water management problems were found on the upper portion of the project. These problems included:

- A discharge of sediment laden storm water was found entering the storm drain system – Sediment laden storm water was found flowing from the sediment basin directly into the storm drain system. The outfall structure of the sediment basin was poorly protected, and no riser pipe or other flow control structure was installed at the outlet of the basin. A short distance from the outfall area of the detention basin a break in the storm drain system was identified, and sediment laden storm water was also entering the storm drain system at this location. In other areas sediment laden storm water was ponding, and evidence of sheet erosion was found throughout the upper portion of the project.
- Failure to implement an effective combination of erosion and sediment control - BMPs for the prevention of erosion were not present. Erosion control on a neighboring property demonstrated the feasibility and effectiveness of erosion control BMPs. Photographs show a dramatic difference between the Reynen and Bardis site which had straw mulch spread and the CRV site which lacked erosion control.
- Failure to protect an intermittent stream crossing – No effort was made to install a culvert so that an earthen stream crossing would not impact streamflow. Sediment is shown in photographs of the streambed.
- Erosion on the lower portion of the site resulted in a large rill or gully.

A second Notice of Violation was issued on 23 February 2005. The Discharger responded that they consulted with the project engineer and made changes to the SWPPP to more accurately reflect the BMPs that were in place. The Discharger also stated that they had protected all areas that showed evidence of channeling, installed a riser pipe in the detention basin, installed additional wattles and check dams where needed. The Discharger also indicated that they would monitor the water level in the detention basin and treat it with flocculent prior to discharge to the overflow pipe.

On 19 March 2005, Regional Board staff inspected the site just prior to a significant rain event and found continued violations as follows:

- A significant amount of sediment was found on the roadways
- Many BMPs were ineffective at retaining sediment and required maintenance or repair.
- Poor housekeeping practices were observed including very poor condition of the concrete washout area.
- Observed sediment discharge to the storm drain system
- Lack of an effective combination of erosion and sediment control on the upper portion of the site.

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.

“(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 CWC Section 13385(c), the Discharger is subject to a maximum administrative civil liability of \$330,000 for violating the General Permit on 13 January 2005 and from

16 February 2005 until 19 March 2005. The Discharger failed to install an effective combination of sediment and erosion control BMPs from 16 February 2005 to 19 March 2005 for 32 days of violations. The maximum civil liability is determined by multiplying the 33 days by \$10,000 per day to obtain \$330,000.

11. Regional Board staff spent a total of 160 hours investigating this incident and preparing this Order. The total cost for staff time is \$12,800 based on a rate of \$80 per hour.
12. Issuance of this Administrative Civil Liability Order to enforce CWC 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).
13. Any person affected by this action of the Regional Water Board may petition the State Water Board to review this action. The State Water Board must receive the petition within 30 days of the date on which the Regional Water Board adopted this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.
14. On 1 July 2005, the Executive Officer issued Administrative Civil Liability Complaint No. R5-2005-0519 to the Discharger, proposing a \$150,000 Administrative Civil Liability pursuant to CWC section 13385. The amount of the liability was established based upon a review of the factors cited in CWC section 13385 and the State Water Resources Control Board (State Water Board) Water Quality Enforcement Policy. The following factors were used to establish the amount of the liability:

Enforcement Considerations

Because of these violations of the General Permit, the Regional Board may impose an ACL pursuant to Section 13385 of the California Water Code (CWC). Under Section 13385, the Board may impose up to \$10,000 for each day in which the violation occurs and up to \$10 per gallon for waste discharged in excess of 1,000 gallons, which is not cleaned up.

Nature and Circumstances

During inspections in early 2005, Regional Board staff observed significant violations of the General Permit at the Gold Creek Estates site on 13 January, noted improvements on 27 January but noted significant violations again on 16 February and 19 March. The Discharger failed to come into compliance with the General Permit although staff conducted a number of inspections and issued two Notices of Violation. Staff made numerous attempts to work with the on-site contact on potential corrective actions but was unable to get consistent implementation and maintenance of storm water BMPs. The Discharger also did not adequately implement the project in accordance with the General Permit. The Discharger failed to protect the storm water drainage system resulting in a more direct path to surface waters for suspended sediment. This inadequate storm water

management implementation added to the problems and should have been addressed in the development and implementation of the SWPPP.

The specific violations of the General Permit include the following:

- the failure to implement an effective combination of erosion and sediment control on all disturbed areas during the wet season,
- failure to develop and implement a SWPPP in accordance with the General Permit and comply with BAT/BCT performance standard,
- failure to comply with Discharge Prohibition A.3 which prohibits storm water discharges from causing or threatening to cause pollution, contamination or nuisance.

Since Regional Board staff did not observe any noticeable improvements to storm water BMPs at the Gold Creek Estates site from 16 February to 19 March, the Discharger was in violation of the General Permit during that period of time.

Extent and Gravity

This site was in violation of the General Permit for much of early 2005. Staff made a number of attempts to work with the Discharger to bring the site into compliance. The violations include inadequate storm water BMPs and the discharge of sediment and other pollutants into the storm drain system and Cosgrove Creek.

The staff person working on this site is the Regional Board's storm water construction coordinator and has inspected over a thousand construction sites in his career. The Gold Creek Estates property is one of most significant problem sites in the 7 counties under his jurisdiction.

Susceptibility of the Discharge to Cleanup and Abatement

Cosgrove Creek is a fast moving creek; therefore, once sediment and other pollutants enter the creek, they would not be readily susceptible to cleanup. The sediment would likely settle in various downstream areas, and positively matching the downstream sediment deposits with the Gold Creek Estates discharges would be difficult.

Degree of Toxicity of the Discharge

The discharges likely added suspended matter to the creek, which has the ability to impair respiration by organisms that depend on gills to obtain oxygen from the water column. The discharges also likely added silt and sediment to the streambed, which may have changed the benthic condition of the stream. However, no aquatic bio-assessment of the stream has been completed.

Ability to Pay

CRV Enterprises, Inc. is an established developer in good financial standing. As such, the monetary penalties associated with this administrative civil liability should pose no financial hardship for the Discharger nor reduce their ability to continue in business.

Prior History of Violations

On 16 March 2005, Calaveras County Public Works issued a Cessation of Public Works Activities letter. In July 2005, U.S. EPA fined the Discharger \$47,500 for illegal fill of wetlands and required additional wetlands mitigation.

The Discharger also owns another development, Olive Orchard, in Calaveras County. An inspection of that site identified significant storm water management issues and as a result, a Notice of Noncompliance was issued.

Degree of Culpability

The Discharger filed a Notice of Intent for coverage under the General Permit, and prepared a Storm Water Pollution Prevention Plan, thus demonstrating awareness on its part of permit requirements and prohibitions. Regional Board staff has conducted a number of inspections of sites owned by the Discharger and have issued notices notifying the Discharger of the violations. Staff has also discussed the violations with the Discharger and his representatives.

Economic Benefit or Savings Resulting from the Violation

The Discharger installed some sediment control BMPs on the lower portion of the construction site but did not maintain and replace those BMPs as needed. The Discharger did not install erosion control BMPs on the lower portion of the project in accordance with the General Permit. On the upper portion of the project, no effective erosion or sediment control BMPs were found on the project until after the 19 March inspection.

The estimated economic benefit of the violations is \$50,000 based on the Discharger's testimony before the Regional Board.

IT IS HEREBY ORDERED that the Discharger shall pay a penalty of \$225,000 as follows:

Within 30 days of adoption of this Order, the Discharger shall pay \$225,000 by check, which contains a reference to "ACL Order No. R5-2005-0120" and is made payable to the *State Water Pollution Cleanup and Abatement Account*.

I, THOMAS R. PINKOS, 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 16 September 2005.

THOMAS R. PINKOS, Executive Officer