

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2007-0533

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

KEN MAAS ENTERPRISES
ALEXANDRIA ESTATES
PLACER COUNTY

This complaint is issued to Ken Maas Enterprises, 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 Assistant 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 Alexandria Estates Subdivision, a 16-acre construction project in Placer County. At the time of Regional Water Board staff inspections of the construction site during the 2006/2007 wet season, approximately 7 acres were observed by staff as disturbed and used as pads for lots and interior roadways; the remaining acreage was either emergency access roadways or preserve areas. Runoff from the site discharges to an unnamed tributary of Strap Ravine or the adjacent wetlands.
2. Strap Ravine is a tributary to the American River. The existing beneficial uses of the American River are municipal and domestic water supply, agricultural supply, service supply, power, water contact recreation, non-contact water recreation, warm and cold fresh water habitat, warm and cold fish migration, warm and cold spawning, and wildlife habitat.
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. 5S31C329428 on 17 August 2004.
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 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.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 18 October 2006, Placer County Resource Conservation District (RCD) conducted a site inspection and provided the Discharger with recommendations on how best to stabilize the construction site.
 - b. On 3 January 2007, Regional Water Board staff inspected the Alexandria Estates construction site and noted that more sediment and erosion control Best

Management Practices (BMPs) were needed throughout the project area. Staff also observed evidence of a discharge of sediment-laden storm water into an unnamed tributary to Strap Ravine as a result of the inadequate BMPs.

- c. On 8 January 2007, a Notice of Violation (NOV) was issued to the Discharger for violations of the General Permit, which requires an effective combination of sediment and erosion control BMPs.
- d. On 17 January 2007, Regional Water Board and Placer County Public Works staff met with Mr. Maas at the construction site. During the meeting, staff walked the site with Mr. Maas and outlined the storm water management concerns, including the lack of an effective combination of sediment and erosion control BMPs at the site, the need for better protection of the surrounding wetlands and the additional measures needed to address the highly erodible soil throughout the site. Staff also discussed the 8 January NOV with Mr. Maas and outlined what was needed to address the NOV.
- e. On 26 February 2007, Regional Water Board staff inspected the Alexandria Estates construction site and again observed significant storm water management problems. These problems included the lack of an effective combination of sediment and erosion control BMPs and a discharge of sediment and sediment-laden storm water into the adjacent wetlands and an unnamed tributary to Strap Ravine.
- f. On 5 March 2007, a second NOV was issued to the Discharger for violations of the General Permit and specifically for not implementing an effective combination of sediment and erosion control BMPs at the site and for discharges which caused or threatened to cause pollution, contamination, or nuisance.
- g. On 6 April 2007, the Placer County Public Works Department issued a stop work order for the project for failure to comply local requirements.
- h. On 12 April 2007, staff with the Regional Water Board, Placer County RCD and Placer County Public Works Department met with the Mr. Maas and his contractor at the Alexandria Estates site. During the inspection, staff pointed out the storm water management problems and RCD staff offered potential solutions. Regional Water Board staff also informed Mr. Maas that a potential violation of the California Department of Fish and Game 1600 Streambed Alteration Agreement violation appeared to be occurring onsite.
- i. On 21 April 2007, Regional Water Board staff inspected the construction site and found that the on-site BMPs had been significantly improved; however, staff also observed the contractor working within the wetland area in violation of the Clean Water Act Section 404 permit, the Section 401 water quality certification and the 1600 Streambed Alteration Agreement.

- j. On 1 May 2007, Placer County Public Works Department lifted the stop work order.
 - k. On 7 May 2007, a Department of Fish and Game warden inspected the construction site and determined that violations of the 1600 Streambed Alteration Agreement were occurring.
9. As discussed above, the Discharger failed to implement BMPs to reduce pollutants in storm water discharges from the Alexandria Estates construction sites to the BAT/BCT performance standard, resulting in the discharge of sediment-laden storm water into nearby surface waters. This failure continued even after the Discharger was contacted by a number of government agencies and provided guidance on BMP implementation. Furthermore, the Discharger illegally worked in the wetlands during the 2006/2007 wet season.

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 \$2,080,000. The maximum liability is based on 7 days of violation and the number of gallons of sediment-laden storm water discharged from the site. The days of violation were 21, 22, 23, 24, 25, 26, and 27 of February 2007. The gallons discharged from the site were estimated taking into account the size of the disturbed area, rainfall data, and application of a runoff coefficient.
11. The Discharger saved approximately \$12,000 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 highly erodible decomposed granite soils; therefore, an effective combination of both erosion and sediment control BMPs is critical to protect the site. Since there were generally perimeter control BMPs installed at the site, the economic benefit received by the Discharger by not installing and maintaining an effective combination of erosion and sediment control BMPs at the site was estimated to be \$2000 per acre. Water Board staff conservatively estimated that erosion and sediment control was necessary on 6 of the total 7 acres disturbed on the project. The economic savings was estimated by multiplying 6 acres by \$2000 per acre.
12. Regional Water Board staff spent a total of 100 hours investigating this incident and preparing this Complaint. The total cost for staff time is \$8,000 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).

KEN MAAS ENTERPRISES INC. IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of eighty thousand dollars (**\$80,000**) which includes \$8,000 in staff cost and \$12,000 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 **13/14 March 2008** Regional Water Board meeting unless the Discharger agrees to waive the hearing and pay the proposed civil liability in full.

3. If a hearing on 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 the service 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.

KEN LANDAU, Assistant Executive Officer

11 December 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 Ken Maas Enterprises, Inc. (hereafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2007-0533 (hereafter 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 service 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 service of the Complaint; and
4. I certify that the Discharger will remit payment for the civil liability imposed in the amount of eighty thousand dollars (**\$80,000**) by check, which contains a reference to "ACL Complaint No. R5-2007-0533" 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)