

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2005-0516

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

CONTINENTAL AMERICAN PROPERTIES, LTD.
HIGHLAND PARK APARTMENTS
PLACER COUNTY

This complaint is issued to Continental American Properties, Ltd. (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 Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger is the owner and developer of Highland Park Apartments, a 13-acre construction project in Placer County. Runoff from the site discharges to Pleasant Grove Creek.
2. Pleasant Grove Creek is a tributary to the Sacramento River. The existing beneficial uses of Pleasant Grove Creek are municipal and domestic supply; agriculture; industry; recreation; freshwater habitat; warm and cold water migration; 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 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 under the General Permit and was assigned WDID No. 5S31C319387 on 6 November 2002.
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 California Water Code Section 13385 (a)(2), civil liability may be imposed for the following violations:

- On 6 November 2003, Regional Board staff inspected the site and noted violations of the General Permit. There was not an effective combination of sediment and erosion control BMPs installed throughout the construction site. This was especially evident along the boundary of the project directly above a vernal pool preserve. There were a few sediment control measures improperly installed above the preserve area, but there were no erosion

- control BMPs in this area as required by the General Permit. This is of special concern given the potential impacts to endangered species residing in the vernal pools. The failure to install an effective combination of sediment and erosion control BMPs is a violation of Section A (6) of the General Permit. Regional Board staff discussed the violations with the site superintendent. Specifically, the site superintendent was advised that to come into compliance with the General Permit, there must be an effective combination of sediment and erosion control installed throughout the project site.
- On 6 December 2004, Regional Board staff inspected the site and observed tracking on the roadways, improper installation of BMPs, poor housekeeping practices, and potential discharge of pollutants from concrete and stucco operations. These conditions threatened to cause pollution in Pleasant Grove Creek with sedimentation and other pollutants in violation of Discharge Prohibition A.3 and do not comply with the BAT/BCT performance standard in violation of Special Provision C.2. Regional Board staff discussed the violations with the Discharger and explained what needed to be done to come into compliance with the General Permit.
 - On 8 December 2004, Regional Board staff conducted a follow-up inspection during a rain event and found improvements made to the construction site since the 6 December inspection. Despite these improvements, staff observed poor housekeeping practices and potential for discharges of pollutants. These conditions threatened to cause pollution in Pleasant Grove Creek in violation of Discharge Prohibition A.3 and do not comply with the BAT/BCT performance standard in violation of Special Provision C.2.
 - On 4 April 2005, Regional Board staff inspected the site and observed sediment on the roadway, improper installation and maintenance of BMPs, and poor housekeeping practices. Staff observed the discharge of sediment-laden storm water and evidence of other pollutants being discharged into Pleasant Grove Creek. This discharge threatened to cause pollution in Pleasant Grove Creek in violation of Discharge Prohibition A.3. On 7 April 2005, a Notice of Violation was issued to the Discharger for failure to comply with the General Permit.
 - The 7 April NOV was sent to the Discharger's address of record but returned to the Regional Board because the Discharger had not updated the address information. The NOV was sent a second time after staff tracked down the correct address for the Discharger. Staff spoke with the Discharger's site representative on 13 June 2005 who confirmed that the NOV had been received and that they were cleaning up the site and working on a response to the NOV.
 - Staff inspected the site on 14 June 2005 and found that it continued to pose a threat to water quality. Water quality concerns on the site included poor housekeeping practices, improper installation and maintenance of BMPs, and sediment on the roadway. Of particular concern was the positioning of spray equipment directly over the drain inlet. It rained in the area on 16 and 17 June 2005.

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 \$604,340. Gallons discharged from the site were calculated for the storm event from 3 April to 4 April 2005 using the Rational method. Based on rainfall data from the Roseville Water Treatment Plant and an impacted area of 10 acres, staff calculated a discharge of 57,434 gallons. Pursuant to California Water Code Section 13385(c), staff subtracted the first 1000 gallons and multiplied by \$10/gallon to get a liability of \$564,340. Also, the 4 days of violations multiplied by \$10,000 per day gives an additional liability of \$40,000.

11. The Discharger saved approximately \$6,000 by not implementing adequate erosion and sediment control BMPs, for not maintaining the BMPs that were implemented, and for not properly training site employees. Based on a survey of consultants, approximately \$1000 per acre is needed to provide the minimum erosion and sediment control measures for apartment buildings. Apartment buildings typically require less erosion control because there are more impervious surfaces. Since

there were some BMPs installed at this site, the cost of installing and maintaining an effective combination of erosion and sediment control BMPs at this site was estimated to be \$600 per acre. To account for the landscaped areas, Regional Board staff estimated that erosion and sediment control was necessary on 10 of the 13 acres. The economic savings was obtained by multiplying the 10 acres by \$600 per acre.

12. Regional Board staff spent a total of 45 hours investigating this incident and preparing this Complaint. The total cost for staff time is \$3,600 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).

CONTINENTAL AMERICAN PROPERTIES, LTD. is hereby given notice

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **\$30,000** which includes \$3,600 in staff cost and \$6,000 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 **15/16 September 2005** 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.

THOMAS R. PINKOS, 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 Continental American Properties, Ltd. (hereinafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2005-0516 (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 **thirty thousand dollars (\$30,000)** by check, which contains a reference to “ACL Complaint No. R5-2005-0516” 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)