

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2005-0519
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

CRV ENTERPRISES, INC.
GOLD CREEK ESTATES
CALAVERAS COUNTY

This complaint 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 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 Gold Creek Estates, a +/- 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 which flows into the Calaveras River 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. 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:

- On 2 December 2004, Regional Board staff inspected the construction site and found that sediment control BMPs had been installed throughout the entire lower portion of the site. On 13 January 2005, however, Regional Board staff conducted a follow-up inspection of the construction site. During the inspection, staff observed inadequate erosion and sediment control BMPs at the site, poor maintenance of the BMPs, tracking on the roadways, and poor housekeeping practices. Staff also observed the discharge of a significant amount of concrete waterproofing membrane, other unidentified non-storm water discharges and sediment laden storm water into the storm drain system in violation of Special Provision C.2 and Section A (6). On 21 January 2005, an NOV was issued for failure to comply with the General Permit.
- On 27 January 2005, Regional Board staff conducted an inspection of the site at the request of Calaveras County. The County had issued an order to stop inspections on the construction site until the significant storm water problems were corrected and additional BMPs were installed. The inspection found that both erosion and sediment control BMPs had been installed throughout the production areas. Staff requested that additional BMPs be added to protect the drain inlets and that the storm drain system, which had been heavily impacted by sediment, be vacuumed out. After significant problems were corrected, the County lifted the stop inspection order.
- On 16 February 2005, Regional Board staff conducted a follow-up inspection of the site during a rain event. During the inspection, staff noted inadequate sediment and erosion control BMPs on the previously un-inspected upper portions on the construction site in violation of section A (6). Staff also observed sediment laden discharge from a large detention pond on the upper portion of the project into the storm drain system and sediment laden discharge into an intermittent tributary of Cosgrove Creek in violation of Discharge Prohibition A.3. In addition staff observed evidence of prior dewatering of the detention basin directly into the storm drain system, a violation of A.3. On 23 February 2005, a second NOV was issued for failure to comply with the General Permit.
- On 16 March 2005, Calaveras County again issued an order to stop inspections on the construction site.
- On 19 March 2005, Regional Board staff inspected the site again just prior to a predicted heavy rain event. During the inspection, staff observed inadequate erosion and sediment control BMPs at the site, poor maintenance of the BMPs, and poor housekeeping practices in violation of Special Provision C.2 and Section A (6).

11. 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.”

12. Pursuant to CWC Section 13385(c), the Discharger has a maximum 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 32 days by \$10,000 per day to obtain \$320,000 and adding in \$10,000 for the additional day of violation.
13. The Discharger saved approximately \$ 120,000 by not implementing adequate erosion and sediment control BMPs, for not maintaining those BMPs that were implemented, and for not properly training site employees. This amount is based on \$2000 per acre, the minimum cost to install standard erosion and sediment control measures on 60 acres. Staff estimated that at least seventy five percent of the total +/- 80 acre site has been disturbed, based on communication with County personnel.
14. Regional Board staff spent a total of 80 hours investigating this incident and preparing this Complaint. The total cost for staff time is \$6,400 based on a rate of \$80 per hour.
15. Issuance of this Administrative Civil Liability Complaint 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).

CRV ENTERPRISES, INC. 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 **\$150,000**, which includes \$6400 in staff cost and \$120,000 to recover the economic benefit derived from the acts that constitute 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 CRV Enterprises, Inc. (hereinafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2005-0519 (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 **one hundred fifty thousand dollars (\$150,000)** by check, which contains a reference to “ACL Complaint No. R5-2005-0519” 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)