

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2006-0511

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

PL ROSEVILLE, LLC
WEST PARK
PLACER COUNTY

This complaint is issued to PL Roseville, LLC (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 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 the West Park Subdivision, a 1,484-acre construction project in Placer County. Runoff from the site discharges to multiple locations and enters either Coyote Creek, which is a tributary to Pleasant Grove Creek, or other unnamed tributaries 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 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. 5S31C333375 on 30 March 2005.

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.

“B RECEIVING WATER LIMITATIONS

1. Storm water discharges and authorized nonstorm water discharges to any surface or ground water shall not adversely impact human health or the environment.
2. The SWPPP developed for the construction activity covered by this General Permit shall be designed and implemented such that storm water discharges and authorized nonstorm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in the Statewide Water Quality Control Plan and/or applicable RWQCB Basin Plan.

“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 prohibits 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, Receiving Water Limitations B.1 and B.2, and Special Provisions C.2 of the General Permit. These violations were caused by the Discharger’s failure to plan, implement and maintain an effective combination of sediment and erosion control Best Management Practices (BMPs) and from discharges of pollutants from Advanced Treatment Systems (ATS) to Pleasant Grove Creek.

9. Pursuant to California Water Code Section 13385 (a)(2), civil liability may be imposed for the following violations:

- a. On 19 December 2005, City of Roseville staff observed the discharge of sediment-laden storm water from the West Park storm drain system into an unnamed tributary to Pleasant Grove Creek. This discharge was partly due to a malfunctioning plug installed by the Discharger in the storm drain system.

- b. On 20 December 2005, Regional Water Board staff observed significant storm water management problems during a site inspection. Staff observed the discharge of sediment-laden storm water from the storm drain system into a vernal pool preserve at two locations and improper dewatering activities, which resulted in the discharge of sediment-laden storm water into the preserve and unnamed tributary to Pleasant Grove Creek.
- c. On 21 December 2005, Regional Water Board staff conducted a follow-up inspection and again observed significant storm water management issues. These problems included a discharge of sediment-laden storm water into the vernal pool preserve and a partial failure of the system to contain and treat storm water on-site.
- d. On 27 December 2005, both Regional Water Board and City of Roseville staff observed the discharge of sediment-laden storm water from the storm drain system into an unnamed tributary to Pleasant Grove Creek and the vernal pool preserve.
- e. On 27 December 2005, a Notice of Violation (NOV) was issued to the Discharger for violations of the General Permit.
- f. On 28 December 2005, City of Roseville staff observed the discharge of sediment-laden storm water from the storm drain system into an unnamed tributary to Pleasant Grove Creek and the vernal pool preserve.
- g. On 29 December 2005, City of Roseville staff again observed the discharge of sediment-laden storm water from the storm drain system into an unnamed tributary to Pleasant Grove Creek and the vernal pool preserve.
- h. On 23 March 2006, Regional Water Board staff responded to a spill from one of West Park's advanced storm water treatment systems that use a flocculent (chitosan) to enhance sedimentation. The Discharger reported that during the night of 22 March 2006, flocculent bound sediment and turbid water had been accidentally discharged from one of the treatment ponds. The discharge coated a portion of Coyote Creek's streambed with sediment. California Department of Fish and Game staff was onsite and required that the entire impacted reach of Coyote Creek be cleaned up to its pre-spill condition. A cleanup plan was written on-site by the Discharger's consultant, and the cleanup began immediately and continued until dark.
- i. On 24 March 2006, Regional Water Board staff inspected the site to assess the clean-up activity occurring in Coyote Creek. During cleanup activities, another spill of flocculent bound sediment and turbid water was observed entering Coyote Creek. The spill occurred in and around the discharge pipe from the treatment system and was quickly cleaned up by on-site personnel. Throughout the day cleanup activity in the creek continued and by late afternoon, the entire reach of impacted creek had been cleaned.
- j. On 12 April 2006, an NOV was issued to the Discharger for violations of the General Permit.

- k. On 13 April 2006, Regional Water Board Staff responded to a spill from the second advanced treatment system at West Park. Staff observed flocculent bound sediment and turbid water discharging from a second treatment system into a vernal pool preserve and unknown tributary to Pleasant Grove Creek. At the time of the inspection the area had been cleaned up under the direction of the California Department of Fish and Game and only a light residue of material was visible. The remainder of the construction site was not inspected.
9. As discussed above, Discharger failed to implement and maintain controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT performance standard, resulting in the repeated discharges of sediment-laden storm water and other pollutants into nearby surface waters. The Discharger also failed to provide adequate oversight over their contractors, resulting in the illegal pumping of untreated storm water into the vernal pool preserve and unnamed tributary to Pleasant Grove Creek.
10. Chitosan has been shown to be especially toxic to rainbow trout, and its release to surface waters threatened to cause pollution, contamination, or nuisance to Coyote and Pleasant Grove Creeks.
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.
- (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 \$2,747,000. The maximum liability is based on 9 days of violations and the number of gallons discharged from the site. The 9 days of violation include 19, 20, 21, 27, 28, and 29 December 2005; 23 and 24 March 2006, and 13 April 2006. Gallons discharged from the site were calculated using the float method and data provided by the Discharger.
11. The Discharger saved approximately \$127,500 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 \$2000 to \$6000 per acre is needed to provide the minimum erosion and sediment control measures for construction sites depending on the soil type. The soil on the site has relatively high clay content and therefore an effective combination of both erosion and sediment control BMPs is required to protect the site. The discharger did install two ATS systems; however, both systems discharged flocculent-bound sediment and turbid water into surface waters. 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 \$750 per acre. The Discharger states in their NOI that 1135 acres will be disturbed. During the 2005-06 rainy season, an estimated 170 acres were disturbed. The economic savings was obtained by multiplying 170 acres by \$750 per acre.
12. Regional Water Board staff spent a total of 120 hours investigating this incident and preparing this Complaint. The total cost for staff time is \$9600 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).

PL ROSEVILLE, LLC is hereby given notice

1. The Executive Officer of the Regional Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **\$900,000** which includes \$9600 in staff cost and \$127,500 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 **21/22 September 2006** Regional Water 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 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 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.

PAMELA CREEDON, Executive Officer

21 July 2006

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 PL Roseville, LLC (hereinafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2006-0511 (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 **nine hundred thousand dollars (\$900,000)** by check, which contains a reference to “ACL Complaint No. R5-2006-0511” 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)