

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2008-0514

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

FREEPORT REGIONAL WATER AUTHORITY
SEGMENT NO 2
SACRAMENTO COUNTY

This complaint is issued to Freeport Regional Water Authority (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated the Federal Water Pollution Control Act (Clean Water Act) section 301 (33 U.S.C. § 1311), CWC section 13376, and National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 Order No. 99-08-DWQ.

The Assistant Executive Officer of the California 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 of the Freeport Pipeline Facilities Project Segment No. 2, a 63-acre linear construction project in Sacramento County. The portion of the project at issue is the stockpile site at 9670 Gerber Road, at the intersection of Gerber and Bradshaw roads. Runoff from the site discharges to an adjacent vernal pool area and Gerber Creek.
2. Gerber Creek is a tributary to Elder Creek, Morrison Creek and the Sacramento River, and is within the Sacramento-San Joaquin Delta. The existing beneficial uses of the Sacramento-San Joaquin Delta are municipal and domestic supply; agricultural supply (both irrigation and stock watering); process and service industrial supply; water contact recreation, non-contact water recreation; warm and cold freshwater habitat; warm and cold migration; warm water spawning; wildlife habitat; and navigation.
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 to obtain coverage under the General

Permit and use best available technology economically achievable (BAT) and best conventional control technology (BCT) to reduce storm water pollution.

5. The Clean Water Act and the CWC 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. 5S34C347711 on 22 June 2007.
6. 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.

Section 301 of the Clean Water Act and CWC section 13376 prohibit the discharge of pollutants to surface waters except in compliance with an NPDES permit.

7. The Discharger violated Discharge Prohibition A.3, Special Provision C.2, and Section A.6 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) and the discharge of sediment into the adjacent vernal pools.
8. The County of Sacramento (County) is responsible for local oversight of this project as required by the municipal separate storm sewer discharge Waste Discharge

Requirements Order No. R5-2002-0206, NPDES No. CAS082597. County staff inspected the Freeport Pipeline Facilities Project to monitor compliance with the local storm water ordinance.

9. Regional Water Board staff inspections focused on an approximately 3-acre portion of the project located at the corner of Bradshaw and Gerber roads. In this area, the contactor (Steve P. Rados, Inc.) had placed large stockpiles of soil adjacent to vernal pools.
10. The County submitted photographs to the Regional Water Board taken during their inspections of this stockpile site portion of the project in late 2007 and early 2008. The County also submitted the emails they sent to the Discharger after the inspections. The e-mails detailed the County's concerns about inadequate storm water management at the site. The County stated in a 7 August 2007 email to Discharger representatives that the County was concerned about "wetlands issues" on or near the site. In a 9 August 2007 email to Discharger representatives, the County raised concerns about the "stockpile on SE corner of Bradshaw & Gerber."
11. Pursuant to CWC section 13385(a)(2), civil liability may be imposed for the following violations:
 - a. On 2 October 2007, County staff took photographs showing sediment tracking on the roadway and inadequate BMPs in the stockpile and storage yard area at the intersection of Bradshaw and Gerber roads. County staff sent the photographs to Discharger representatives in an email and asked if they had proper approvals to work at this location.
 - b. On 3 October 2007, County staff observed a concrete truck improperly washing out onto the ground, a poorly constructed concrete wash out area, improperly installed BMPs, tracking on the roadway, and roadside ditches along Gerber Road becoming filled with soil and construction material. The county sent multiple emails to Discharger representatives with photographs of the inspections and relaying concerns about improper concrete truck washing, improperly installed BMPs and dirt in the roadside ditches.
 - c. On 15 November 2007, County staff took photographs showing tracking on the roadway around the stockpile and storage yard area, and improperly installed and maintained BMPs.
 - d. On 27 November 2007, County staff took photographs showing inadequate BMPs in the stockpile and storage yard area. County photographs also show a dewatering activity without adequate BMPs.
 - e. On 4 December 2007, County staff took photographs showing significant tracking on the roadway leading into the stockpile and storage yard area.

- f. On 7 December 2007, County staff took photographs showing significant storm water management problems at the site. The photographs show inadequate BMPs around the stockpile and storage yard area, and sediment-laden storm water discharges into the vernal pool preserve.
 - g. On 23 January 2008, County staff took photographs showing inadequate BMPs and tracking on the roadway, and County staff noted in an email to Discharger representatives that, "There is still turbid water discharging to the vernal pools at the site."
 - h. On 25 January 2008, Regional Water Board staff inspected the site and observed significant storm water management problems. These problems included the lack of an effective combination of erosion and sediment control BMPs, poorly stabilized stockpiles, and a discharge of sediment-laden storm water into the vernal pool preserve at the intersection of Bradshaw Road and Gerber Road.
 - i. On 28 January 2008, the County issued a Notice of Violation to the Discharger for violating the County's Stormwater Management and Discharge Control Ordinance.
 - j. On 31 January 2008, Regional Water Board staff issued a Notice of Violation to the Discharger for violating the General Permit.
 - k. On 31 January 2008, County staff took photographs showing that additional BMPs had been added to the project and a small on-site detention basin for storm water storage.
 - l. On 11 February 2008, Regional Water Board staff conducted a follow-up site inspection and observed significant improvements in storm water management throughout the construction site. Staff noted additional erosion and sediment control BMPs along the roadway and surrounding areas, construction of a small on-site sediment basin and installation of piping to convey storm water to the basin. Three baker tanks were also placed on-site for additional storm water storage.
9. As discussed above, the Discharger failed to implement an effective combination of erosion and sediment control BMPs to reduce pollutants in storm water discharges from the construction site. The onsite erosion and sediment controls failed to meet 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 notified of the issues by Sacramento County.
10. Section 13385 of the CWC 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 CWC Section 13385(c), the Discharger has accrued a maximum civil liability of \$520,000. The maximum liability is based on eight days of violation and 46,000 gallons of sediment-laden storm water discharged from the site. The days of violation were 2 and 3 October; 15 and 27 November; 4 and 7 December of 2007; and 23 and 25 January of 2008. These dates are based on photographs and inspections that document the violations. In addition, Regional Water Board staff calculated that the site discharged over 46,000 gallons of sediment-laden storm water during two events, from 6 to 7 December 2007 and from 24 to 25 January 2008. 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. 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 (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

FREEPORT REGIONAL WATER AUTHORITY 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 one hundred thousand dollars (**\$100,000**).
2. A hearing on this matter will be scheduled for the **12/13 June 2008** Regional Water Board meeting unless the Discharger agrees to complete the following by **21 April 2008**:
 - a) Waive the hearing by completing the attached form and returning it to the Regional Water Board; and
 - b) Pay the proposed civil liability of one hundred thousand dollars (\$100,000) 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.

JACK E. DEL CONTE, Assistant Executive Officer

19 March 2008

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 Freeport Regional Water Authority (hereafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0514 (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 **one hundred thousand dollars (\$100,000)** by check, which contains a reference to "ACL Complaint No. R5-2008-0514" 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 the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Regional Water Board receive new information during this comment period, the Regional Water Board may withdraw the complaint, return payment, and issue a new complaint.
6. 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)