CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANFRANCISCO BAY REGION

COMPLAINT NO. R2-2008-0063

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
VULCAN MATERIALS COMPANY
PLEASANTON ASPHALT, SAND, AND GRAVEL FACILITY
IN
CITY OF PLEASANTON
ALAMEDA COUNTY

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region ("Water Board"), hereby gives notice that

1. Vulcan Materials Company ("Discharger"), from its Pleasanton Asphalt, Sand, and Gravel Facility ("Facility"), has violated provisions of law for which the Water Board may impose civil liability pursuant to California Water Code ("CWC") Section 13385 (a) (2) and Section 13323. Based on the allegations and considerations described below, this Complaint proposes to assess $190,000 in penalties for the violations cited. The deadline for comments on this Complaint is November 24, 2008, 5 p.m.

2. The Facility is an active sand and gravel quarry with a processing plant. It is located at 50 El Charro Road in Pleasanton, Alameda County.

3. On June 19, 2002, the Water Board adopted NPDES Permit No. CAG982001, Order No. R2-2002-0063, General Permit for Discharges from Aggregate Mining and Sand Washing Facilities to Surface Waters.

4. On August 8, 2003, the Discharger obtained coverage under Order No. R2-2002-0063.

5. Order No. 2002-0063 includes the following requirements:

A. DISCHARGE PROHIBITION

2. The discharge shall not contain silt, sand, clay or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discolorations in surface waters or to unreasonably affect or threaten to affect beneficial uses.

B. EFFLUENT LIMITATIONS

Constituents	Daily Max.	30-day Arithmetic Mean	7-day Arithmetic Mean
c. Total Suspended Solids (TSS), mg/L		30	45
d. Turbidity (Nephelometric Turbidity Unit, or NTU)	40		

6. On April 4, 2007, the Discharger violated the 7-day mean TSS effluent limitation of Order No. R2-2002-0063.

7. On April 12, 2007, the Discharger violated the 7-day mean TSS effluent limitation of Order No. R2-2002-0063.

8. On April 12, 2007, the Discharger violated the turbidity daily maximum effluent limitation of Order No. R2-2002-0063.

9. For the month of April 2007, the Discharger violated the 30-day mean TSS effluent limitation of Order No. R2-2002-0063.

10. On April 29, 2007, the Discharger released approximately 48,000 gallons of sediment-laden water to Arroyo Mocho thereby violating Discharge Prohibition A.2 of Order No. R2-2002-0063.

11. Unless waived, the Water Board will hold a hearing on this Complaint at its January 14, 2009, meeting, at the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland. The Discharger or its representative will have an opportunity to be heard and contest the allegations in this Complaint and the imposition of the civil liability. An agenda for the meeting will be mailed to the Discharger not less than 10 days before the hearing date. The deadline to submit all written comments and evidence concerning this Complaint is specified in Finding 1.

12. At the hearing, the Water Board will consider whether to affirm, reject, or modify the proposed civil liability, to refer the matter to the Attorney General for recovery of judicial liability, or take other enforcement actions.

ALLEGATIONS

13. This complaint is based on the following:

Water treatment and discharge pump system

a. At the Facility, the sand and gravel is mined and then washed to remove fine sediments. The wash water, along with storm water and ground water from the Facility, is routed to settling ponds. The water from the settling ponds is recycled for

various uses (dust control, washing, etc.) around the Facility. The Facility is permitted to discharge any excess water from the settling ponds to Arroyo Mocho, which is a tributary of Alameda Creek.

b. Retired quarry pits serve as settling ponds as mining operations progress at the Facility. At the time of the discharge, Basin No. 6 was the active settling pond (see Attachment 1, aerial photo). Most of the influent enters Basin No. 6 at the north end, and a second significant source of sediment (washwater from the Facility conveyor belt) enters Basin No. 6 at the south end. Effluent discharges via a floating barge pump, also at the south end. That effluent is recycled for use in other areas of the Facility or is discharged to Arroyo Mocho. The Discharger controls the flow returning to the Facility and the flow discharging to Arroyo Mocho by a manually-operated valve.

c. In April 2007, Basin No. 6 had been in use for 5 years. A depth survey conducted 8 months prior showed roughly three quarters of the Basin had a depth of 20 feet. At the time of the survey, the Discharger estimated that Basin No. 6 had an additional 1-2 years settling capacity.

d. As described by the Discharger in its July 20, 2007, letter, "*the typical mode of operation is to pump water into the basin, including process water and dewatering effluent from the actively mined areas, 8 hours a day, 5 days a week. Because the flow into the basin is greater than the capacity of the discharge pump, the discharge pump is typically run 24 hours a day, 7 days a week at approximately 3,000 gallons per minute….*"

e. The Discharger has security staff at the Facility on the weekends. However, not until after the incident on April 29, 2007, was the weekend security staff instructed to inspect the discharge and trained in shutting down the discharge pumping system. At the time of the April 29, 2007, discharge, the Facility manager was the only person with the ability to shut off the floating pump, which he could do remotely from his home.

Effluent limitation violations in April 2007

f. The first two April 2007 weekly TSS sample results (collected on April 4, 2007, and April 12, 2007) indicate that the Discharger violated the 30-day mean TSS limitation. In addition, the April 4, 2007, and April 12, 2007, TSS samples are each in violation of the 7-day mean TSS effluent limitation.

g. The Permit has requirements that direct dischargers to identify and correct the cause of violations and prevent future similar violations. The Discharger did not take permit-required follow-up actions for the April 4, 2007, and April 12, 2007, TSS violations. Specifically, the Permit's Self Monitoring Program requires the following actions, which the Discharger did not complete:

- Self Monitoring Program Section III.1.a: If two consecutive samples of a constituent monitored on a weekly or monthly basis in a 30-day period exceed the monthly or 30-day average effluent limit for any parameter, (or if the required sampling frequency is once per month and the monthly sample exceeds the monthly or 30-day average limit), the sampling frequency shall be increased to daily until the additional sampling shows that the most recent 30-day moving average is in compliance with the monthly or 30-day average limit.

- Self Monitoring Program Section V.1.the Self Monitoring Report Letter of Transmittal shall include the following:
  - b.1: Identification of all violations of effluent limits or other discharge requirements found during the monitoring period.
  - b.3: The cause of the violations.
  - b.4: Discussion of corrective actions taken or planned to resolve violations and prevent recurrence, and dates or time schedule of action implementation.

h. On April 12, 2007, the Discharger also exceeded the daily maximum turbidity effluent limitation. The Discharger did report the turbidity violation in its Self Monitoring Report Transmittal Letter and the Discharger did not increase monitoring as required under the Permit's Self Monitoring Program. Self Monitoring Program Section III.1.b states, "If any maximum daily limit is exceeded, the sampling frequency shall be increased to daily until two samples collected on consecutive days show compliance with the maximum daily limit."

   Furthermore, in the Self Monitoring Report Transmittal Letter, the Discharger did not discuss the cause of the turbidity violation or any corrective measures taken to address it.

i. Water Board staff discussed these omissions with the Discharger on August 12, 2008. During that conversation, the Discharger explained that it followed the following procedures for the lab were in place during the April 2007 time period:

   - Lab results would take 3 weeks to get to the Facility because they were mailed first to company head quarters and then to the Facility.

   - The Discharger had not instructed its lab to alert the Discharger about violations; instead, the Discharger would visually scan the lab reports and flag any violations noted.

   - The Discharger was unaware of the requirement to increase monitoring.

   - The Discharger accidentally overlooked the three TSS violations and did not report them in its Self-Monitoring Program transmittal letter.

Events on April 29, 2007

j. On Sunday, April 29, 2007, Zone 7 Water Agency staff was collecting samples in Arroyo Las Positas (downstream from the confluence with Arroyo Mocho) when she noticed a plume of sediment-laden water coming from upstream. Zone 7 staff contacted the City of Pleasanton staff at 12:15 p.m.. The City of Pleasanton staff drove to the area to investigate, and traced the plume of sediment-laden water to the Facility. When City staff reached the Facility around 1:00 p.m., the Facility discharge water was running clear. No one observed the exact time at which the discharge started to run clear.

k. An area resident independently observed the sediment-laden water in Arroyo Mocho and reported the incident to the Cal/EPA Environmental Complaint system as follows:

> *"[Around 8 a.m.] on the morning of April 29, [2007], I noticed that there has been some sort of dumping incident in Arroyo Mocho in the Staples Ranch area. The water has become very brown (like café au lait) and no longer transparent. There appear to be dead fish in the arroyo. I have taken water samples and digital pictures; I can provide these as needed. Although this is not the first time that this has happened, it appears to be the worst recent incident. My home overlooks this area, so I tend to notice these incidents."*

l. At 1:15 p.m., Discharger security staff called the Facility manager and alerted him to the presence of City of Pleasanton staff investigating the sediment-laden discharge.

m. The Facility manager was in his car at time; he drove home so that he could turn off the floating pump by remote access at 1:35 p.m.

Effluent TSS concentration during April 29, 2007, discharge

n. The Discharger did not take an effluent sample of the sediment-laden discharge on April 29, 2007. The Permit requires at a minimum weekly TSS sampling; the TSS sample for that week had been collected two days before. Furthermore, by the time the Discharger became aware of the sediment-laden water release, the discharge pump was already drawing clear water.

o. The April 29, 2007, release clearly would have resulted in an additional 7-day mean TSS effluent violation and would have compounded the 30-day TSS violation from earlier that month. This is based on a receiving water sample taken at the confluence of Arroyo Mocho and Arroyo Las Positas by City of Pleasanton staff on April 29, 2007, that had 4,300 mg/L TSS. Arroyo Mocho is a seasonal drainage, and the only water in Arroyo Mocho on April 29, 2007, was the Facility's effluent. This receiving water sample was taken about 1.5 miles downstream of the Facility's discharge location and immediately downstream of a fish passage structure in Arroyo Mocho behind which a large portion of the sediment would have dropped out of the water.

Approximate volume of sediment-laden water discharged

p. There was no direct observation of the exact time and date that the discharge of sediment-laden water began and ended. Therefore, the approximate volume of sediment-laden discharge is based on the following calculation:

Period of discharge (hours) x Flow rate in (gallons/hour)
= Volume of sediment-laden water discharged (gallons)

4 hours x 12,000 gallons/hour = 48,000 gallons

Approximate total time of discharge, in hours, based on the following:	**4 hours**
▪ The approximate time the plume was first observed downstream by an area resident	8 a.m.
▪ The approximate time at which City of Pleasanton staff arrived at the Discharger's Facility to find the discharge water running clear, minus 30 minutes (a rough estimate)	12:30 p.m. – 30 min = 12:00 p.m.
Approximate average flow rate (total gallons / total hours) based on the following:	**12,000 gallons/hour**
▪ The full volume of water discharged over the weekend based on the following:	687,000 gallons
- The totalizer reading taken Friday, April 27, 2007, at 4:30 a.m.	294,466,000 gallons
- The totalizer reading taken on Sunday, April 29, 2007, when the pump was shut off at 1:35 p.m.	301,336,000 gallons
▪ The time, in hours, between the totalizer readings	57 hours

Cause of discharge of sediment-laden water

q. The pump pulled sediment-laden water from the bottom of the pond instead of pulling clear water from the surface. The Discharger described the cause of the release of sediment-laden water in its August 23, 2007, letter:

> *"The apparent source of the silt laden water was silt in the Facility's settlement Basin 6. Water was decanted from this basin via a floating pump to be discharged into Arroyo Mocho. Although the exact mechanism that entrained the silt remains unknown, several possible scenarios were presented in the [earlier] August 13, 2007, letter [from Vulcan] and included:*
>
> ▪ *Scenario 1: Because of normal drawdown of the water surface by pumping and greater than normal bank loss because of the dry winter, the level of the pump intake could*

have been lowered sufficiently to start pumping sediment off the bottom of the basin.

- *Scenario 2: Because the floating discharge pump is somewhat free to move laterally, a temporary shift in wind direction and/or velocity could have blown the pump in closer to the bank than normal, causing the intake to suck up sediment from the bank.*

- *Scenario 3: There could have been a subsurface slump of the sediment built up in the southeast corner of the basin from conveyor belt washing. This slumping material could have encroached on the pump intake and been sucked in by the pump and then discharged to Arroyo Mocho.*

- *Scenario 4: Some combination of the above three scenarios may have occurred.*"

Extent of the impact of the April 29, 2007, discharge

r. There is a fish ladder and flood control basin 1.5 miles downstream of the discharge point. These engineered structures trapped a large quantity of the discharged sediment.

s. Fine sediments from the discharge continued 6 to 8 miles downstream based on the City of Pleasanton staff observations on the day following the spill.

Cleanup and response activities

t. The discharge ceased while Water Board and Department of Fish and Game staff conferred upon a cleanup plan. On May 8, 2007, Water Board staff informed the Discharger that it must not resume discharge until authorized by the Department of Fish and Game.

The Department of Fish and Game determined that the 1.5 miles of Arroyo Mocho had to be cleaned up before the Discharger could be allowed to resume discharge. The Department of Fish and Game developed an Incident Action Plan for the cleanup, which had two phases: dry and wet. The following parties signed the Incident Action Plan on May 11, 2007:

- The Discharger and its consultant
- Water Board staff
- Department of Fish and game staff
- Zone 7 Water District staff.

u. The dry cleanup phase, which the Discharger completed on June 14, 2007, involved the following consecutive steps:
   1) Removal of liquids and solids with vactor trucks
   2) Manual removal of remaining sediments by shovels and portable conveyors.

v. The wet cleanup phase, which the Discharger completed on July 14, 2007, involved the following consecutive steps:
   1) Installation of water dams, pumps, and over ½ mile of pipe
   2) Flushing of remaining sediments out of the streambed and pumping of sediments back to the settlement basin.

w. In all, the Discharger removed approximately 520 cubic yards of sediment, in 110 days, working an average of 6 days a week. The Discharger spent approximately $675,000 in cleanup-related costs.

x. The Discharger adjusted equipment and weekend staff activities in order to prevent reoccurrences of sediment-laden discharge. The Discharger installed a surveillance camera that allows security staff to remotely monitor the discharge point 24 hours per day. Also, the Discharger has instructed its weekend security staff to drive by and visually inspect the pump at the settling pond and the discharge location once a day on weekends.

CIVIL LIABILITY

14. For violating CWC Section 13385 (a) (2), the Water Board may impose civil liability administratively pursuant to CWC, Chapter 5, Article 2.5 (commencing at Section 13323) in an amount not to exceed the sum of the following:

    $10,000 for each day in which a violation occurred, and
    $10 for each gallon of discharge that is not susceptible to cleanup or is not cleaned up in excess of 1,000 gallons.

    If this matter is referred to the Attorney General for judicial enforcement, a higher liability of $25,000 per day of violation and $25 per each gallon of discharge that is not susceptible to cleanup or is not cleaned up in excess of 1,000 gallons may be imposed.

    The maximum administrative civil liability the Water Board may impose for the violations is $1,545,330,000 (see Table 1 for the calculation of this figure).

15. In determining the amount of civil liability to be assessed against the Discharger, the Water Board must take into consideration the factors described in CWC Section 13385 (e) as follows:
    - 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,
    - With respect to the discharger, the ability to pay and the effect on ability to continue in business,
    - Any voluntary cleanup efforts undertaken,
    - Any prior history of violations,
    - The degree of culpability,

- The economic savings, if any, resulting from the violation, and
- Other such matters as justice may require.

Nature, circumstances, extent, and gravity of the violation or violations

Nature

The discharges were of sediment-laden water, which could impact several beneficial uses of Alameda Creek and the immediate vicinity of Arroyo Mocho and Arroyo Las Positas. The overall level of impact was moderate. For a full discussion, refer to Table 2

Circumstances

The only circumstance that separated the April 29, 2007, incident from any other normal day in the Dischargers' operations was that the discharge took place on the weekend. The weather was normal for that time of the year. The floating pump started discharging sediment because the Discharger was not monitoring the pump's operation and because the Discharger did not take required action to investigate its earlier April 2007 violations.

Extent and Gravity

The quantity of sediment contained in the April 29 discharge was likely orders of magnitude above the discharge limits. The April 29 discharge resulted in deleterious sediment accumulation in a 1.5-mile stretch of Arroyo Mocho, and caused a visible plume of turbid water 6 to 8 miles downstream.

In regards to the four effluent limitation violations in April 2007, they were significant because of the large volume of water the Facility discharges (several hundred thousand to a few million gallons a day) to Arroyo Mocho, a relatively small receiving water body. Furthermore, the April 12, 2007, turbidity daily maximum violation was an order of magnitude higher than the allowable concentration. Without more data on the magnitude and duration of downstream turbidity impacts we conclude that the extent and gravity of these discharges are moderate.

Susceptibility to cleanup or abatement

The sediment that settled out in the 1.5 miles downstream of the discharge point on April 29, 2007, was susceptible to cleanup and was cleaned up by the Discharger. Settleable sediments associated with the earlier April 2007 TSS violations may have also been susceptible to cleanup and were likely cleaned up along with cleanup of the April 29 incident. However, there was no practical method for cleaning up the finer sediments that extended as far as 8 miles downstream. Similarly, there is no practical method for cleaning up the discharge that was in violation of the turbidity effluent limit.

Degree of toxicity of the discharge

The impact that the April 2007 violations had on wildlife in the receiving water body was not directly observed. Therefore, the degree of toxicity cannot be fully evaluated. However, while the toxicity of TSS and turbidity is relatively low for fish, it is high for aquatic organisms that live in the creek bed (i.e., benthic macroinvertebrates). Any benthic macroinvertebrates living in the first 1.5 miles of Arroyo Mocho would have

been severely impacted by the April 29, 2007, discharge and/or the removal of sediments during cleanup.

Ability to pay and ability to continue in business
The Discharger is a publicly traded company (NYSE symbol VMC). According to the official company website (www.vulcanmaterials.com), in 2007, the Discharger posted net annual sales of over $3 Billion. Therefore, the penalty will not affect the Discharger's ability to pay and continue in business.

Voluntary cleanup efforts
The Discharger conducted a thorough, efficient, and well-executed cleanup. However, the cleanup was not voluntary: both Water Board and Department of Fish and Game staff required the Discharger to clean up Arroyo Mocho before the Discharger would be allowed to resume discharge.

Prior history of violations
According to the Discharger's Self Monitoring Reports, the Discharger also violated its turbidity daily maximum effluent limitation twice in 2005.

The probability that similar discharges to the one on April 29, 2007, have occurred in the past is high because prior to this incident, the Discharger has not monitored its discharges on weekends. The area resident who reported this particular incident mentioned observing similar events in the past. The April 29, 2007, discharge was only discovered by chance because Zone 7 staff happened to be sampling downstream that day.

Degree of culpability
The Discharger is highly culpable for the April 29, 2007, incident for the following reasons: poor management of the pond and its pumping apparatus, failure to properly monitor the quality of the pond's discharge, failure to report prior violations. Had these occurred, the April 29 incident could have been prevented.

The conclusion of poor management of the settling pond and pumping apparatus is based on the following:

- The Discharger was careless in its placement of the discharge pump apparatus in relation to sediment input locations. A basic concept in settling pond design is to place the sediment input as far away as possible from the clean water output. In Basin No. 6, the main input pipe enters the pond at the north end. The clean water output pump is at the south end. This would be fine, except that another major source of sediment—wash water from the conveyor belts—enters the pond at the south end (close to the clean water output pump). The Discharger failed to take this additional input source into consideration when it chose the location for the clean water output pump.

- The Discharger was not actively monitoring depth to sediment in the pond even though the pond was in its final stages of sediment capacity. At the time of the

incident, Basin No. 6 had been in use for five years. Eight months earlier, the Discharger surveyed Basin No. 6 for available capacity, and determined that the pond had only 1-2 years more of sediment storage capacity. With this short lived capacity and uncertainty in the calculations, the Discharger should have checked the depth more frequently. (The Discharger described this procedure as being as simple as sticking a measuring pole in the water until it hits the bottom.) Yet, the Discharger failed to take this simple, reasonable precaution.

- The Discharger was not taking simple, reasonable steps to monitor water levels in the pond to ensure adequate clearance of the discharge pump intake from pond bottom sediments. The Discharger surmises that it was a drop in water level, not a rise in sediment, which caused the April 29, 2007, incident. The Discharger reports that it is not unusual for the water level to vary 5-10 feet. Since pond bottom sediment levels would only increase and not decrease, it would be reasonable practice to monitor pond water levels to ensure that its discharge pump intake had sufficient clearance from pond bottom sediments. Yet, the Discharger failed to notice any drop in water levels. According to the Discharger's Site Specific Best Management Practices plan, Discharger staff walks the facility twice daily to inspect the pond berms. Apparently, the Discharger's staff does not look for drops in water level. Such a task entails simply glancing at the water marks on the bank of the pond.

During a meeting with Regional Water Board staff on August 26, 2008, the Discharger explained that its attention was not focused on the pond and pumping system, but on the outfall and discharge quality. We assert that the Discharger has not paid close attention to its outfall nor the water quality of its discharge. This assertion is based on the following:

- The Discharger routinely discharges, unsupervised, over the weekends. Even though the Facility operates Monday through Friday, in order to maintain the pond level, the discharge runs 7 days a week. The Discharger contracts with weekend security staff, but, at the time of the incident, those staff were not instructed to monitor the outfall or the discharge.

- The Discharger did not review discharge analytical data in a timely fashion, which handicapped the Discharger in being able to track and respond to discharge quality problems. Leading up to the incident, the Discharger received monitoring data from its contract laboratory via US mail, which traveled first to company headquarters before rerouting to the Facility. In all, the monitoring data would take up to 3 weeks to arrive at the Facility. It is not uncommon practice for other dischargers to require as part of their laboratory contracts to have analytical results faxed or emailed as soon as they are available (1 day to 1 week from date of sampling) so that a discharger can take more timely response actions if there is a violation.

- The Discharger overlooked three other TSS violations (earlier the same month), which, had the Discharger been timely in its review of discharge quality data, would have provided a warning sign that a problem existed. Considering that the Discharger

had no prior documented TSS violations, having three in close succession should have been a clear warning sign to the Discharger that something was wrong. Moreover, the Discharger failed to take the permit-required follow up actions that are designed to have dischargers investigate the cause of violations so that corrective actions can be taken. Had the Discharger done so, it may have discovered that pond levels had dropped or that sediment levels at the south side of the pond had risen close to the discharge pump intake. The Discharger failed to do so, and thus, missed the opportunity to prevent the more serious discharge incident of April 29, 2007.

- The Discharger's daily inspections of the outfall were conducted in the dark—not the ideal condition for observing sediment load in the effluent. In recent months (since February 2007), the Discharger was reading the discharge pump totalizer and observing the discharge in predawn early morning conditions. (Most readings between February and April 2007 took place at 4 a.m.) While the early morning timing may have been convenient for other reasons, observing the discharge in the predawn dark is not the best way to observe the quality of the water being discharged.

- Finally, the downstream resident who reported the April 29, 2007, incident mentioned that sediment releases have happened before; this was just the worst recent incident.

In all, prior to the April 29, 2007, incident, protecting water quality does not appear to have been a priority for the Discharger. Had the Discharger been thoughtful in the placement of its pump, made daily observations of the water level in the pond, and paid some attention to violations earlier that month, the April 29, 2007, could very likely have been avoided. The Discharger has asserted that it could not see the problem coming; we assert that the Discharger simply wasn't looking out for it. For all these reasons, the Discharger is highly culpable for the April 29, 2007, incident.

Economic benefit or savings

Water Board staff was unable to quantify any economic benefit or savings on the part of the Discharger. Modest savings may have occurred by the Discharger not spending the time to train weekend staff and evaluate water quality aspects of facility design performance.

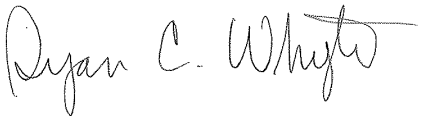
Other matters as justice may require

The Discharger has been cooperative and responsive to concerns raised by Water Board staff about the incident and its investigation. It should be noted that, since the Permit reissuance in February 2008, the Discharger has changed its system for receiving data from its lab and responding to any violations. Specifically, the Discharger now receives monitoring data by e-mail (within a few days of sample analysis) and immediately evaluates the data for violations.

Staff time to investigate and prepare the Complaint and supporting evidence is estimated to be 130 hours. Based on an average cost to the State of $125 per hour, the total staff cost is $16,250.

16. This action is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.

17. The Discharger can waive its right to a hearing and contest the allegations contained in this Complaint by (a) paying the civil liability in full or (b) undertaking an approved supplemental environmental project in an amount not to exceed $68,000 and paying the remainder of the civil liability, all in accordance with the procedures and limitations set forth in the attached waiver.



October 22, 2008
Date

Dyan C. Whyte, Assistant Executive Officer

Attachments:

Waiver
Table 1, Maximum Civil Liability
Table 2, Beneficial Use Impacts
Aerial Photo of Facility
Photo of Receiving Water at Fish Ladder Structure Downstream of Facility, August 29, 2007

WAIVER OF 90-DAY HEARING REQUIREMENT FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

If you waive your right to a hearing, the matter will be included on the agenda of a Water Board meeting but there will be no hearing on the matter, unless a) the Water Board staff receives significant public comment during the comment period, or b) the Water Board determines it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Water Board holds a hearing under either of the above circumstances, you will have a right to testify at the hearing notwithstanding your waiver. Your **waiver is due no later than November 24, 2008**.

❑ Waiver of the right to a hearing and agreement to make payment in full.
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in Complaint No. R2-2008-0063 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the scheduled Hearing date. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Assistant Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability.

❑ Waiver of right to a hearing and agreement to make payment and undertake an SEP.
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in Complaint No. R2-2008-0063, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to $95,000 and paying the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the scheduled Hearing date. **The SEP proposal shall be submitted no later than December 12, 2008.** I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Assistant Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Assistant Executive Officer, I agree to pay the suspended penalty amount within 30 days of the date of the letter from the Assistant Executive Officer rejecting the proposed/revised SEP. I also understand that I am giving up my right to argue against the allegations made by the Assistant Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Assistant Executive Officer. I understand failure to adequately complete the approved SEP will require immediate payment of the suspended liability to the CAA.

❑ Waiver of right to a hearing.
By checking this box, I agree to promptly engage the Regional Water Board prosecution staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is not

waiving its right to a hearing on this matter. I understand that this waiver is a request to delay the hearing so the Discharger and Regional Water Board staff can discuss settlement. It does not constitute the Regional Water Board's agreement to delay the hearing. A hearing on the matter may be held before the Regional Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.

_____	_____
Name (print)	Signature
_____	_____
Date	Title/Organization

Table 1 – Maximum Civil Liability

Date	**Requirement (reported value in parenthesis)**	**$10,000 per day**	**Gallons discharged**	**$10 per gallons discharged minus 1,000**
April 29, 2007	Discharge Prohibition A.2.	$10,000	48,000	$470,000
April 2007	TSS 30-day mean effluent limit of 30 mg/L (48.75 mg/L)	$300,000	97,000,000	*$969,990,000*
April 4, 2007	TSS 7-day mean effluent limit of 45 mg/L (100 mg/L)	$70,000	23,700,000	*$236,990,000*
April 12, 2007	TSS 7-day mean effluent limit of 45 mg/L (51 mg/L)	$70,000	16,872,000	*$168,710,000*
April 12, 2007	Turbidity daily effluent limit (600 NTU)	$10,000	526,000	$5,250,000
Total Maximum Civil Liability				**$1,381,410,000**

Table 2

Beneficial Uses Within Alameda Creek Watershed	**Affected by discharge?**
Cold freshwater habitat	Not likely. Cold freshwater habitat primarily exists upstream of the Facility in Arroyo Mocho Canyon.
Groundwater recharge	Undetermined but unlikely. According to Zone 7 Water Agency staff, it is undetermined whether the discharge impacted Zone 7's recharge beds. Alameda County Water District determined that the discharge did not affect its recharge beds.
Fish migration	No. Alameda Creek historically was an anadromous fish run and there are known populations of anadromous fish up and down stream of the discharge location. The upper reaches of Arroyo Mocho are considered some of the most valuable spawning habitat in the Alameda Creek watershed. However, the BART weir downstream is a complete fish migration barrier. The fish ladder 1.5 miles downstream of the discharge location was built in anticipation of the eventual removal of the BART weir fish migration barrier.
Noncontact water recreation	Yes. The discharge did impact the aesthetic enjoyment of Arroyo Mocho and the downstream stretch of Arroyo Las Positas. As described by a downstream resident, "Even though a mile away from the source, the water had a paint like consistency, choking out plant and animal life." As observed by City of Pleasanton staff, the cloudy plume stretched 6-8 miles downstream of the discharge, and elevated cloudiness was still evident in October 2007 (more than four months after the discharge) due to residues of fine sediment in this lower stretch of the creek that were not captured and cleaned up.
Fish spawning	No. The portion of Alameda Creek Watershed below the discharge location is not suitable spawning habitat for anadromous fish.
Warm fresh water habitat	Yes. Sacramento sucker and California roach were observed in Arroyo Mocho during the 1992-1998 survey of Bay Area fishes. Sediment deposition has been shown to reduce macroinvertebrate population density thereby reducing food supplies for available fish, and altering ecosystem balance. While increased suspended solids may not be acutely toxic to fish, it has been shown to stress fish, inhabit their ability to find prey, and compromise fish immune systems. Extremely high suspended concentrations can abrade and clog gills, this may explain the dead fish observed by the resident.
Wildlife habitat	Yes. As mentioned in the Basin Plan, Turbidity and sedimentation in the riparian habitat can have a negative effect on water fowl and benthic macroinvertebrates. The impact to any wildlife living in the mile and a half of Arroyo Mocho downstream of the discharge was severely impacted by both the discharge and the resulting cleanup.

Attachment 1
Aerial Photo of the Facility and Surrounding Area

DRAWN BY	CHECKED BY	---		FILE NAME	FIG_A
WSL	APPROVED BY	---		PROJECT NUMBER	VHC0710
6/1/07					

Photo of Receiving Water at Fish Ladder Structure Downstream of Facility, August 29, 2007