

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

COMPLAINT NO. R2-2010-0061

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
COUNTY OF ALAMEDA

FAILURE TO OBTAIN CONSTRUCTION STORMWATER PERMIT COVERAGE AND
COMPLY WITH CONSTRUCTION AND MUNICIPAL STORMWATER PERMIT PROVISIONS

This administrative civil liability complaint (“Complaint”) is issued under the authority of California Water Code (“CWC”) section 13323 to the County of Alameda (“Discharger”), to assess administrative civil liability pursuant to CWC section 13385. This Complaint proposes administrative civil liability against the Discharger in the amount of \$102,600 for the following violations:

- Failure to properly implement and maintain an effective combination of erosion and sediment controls, including material/waste management BMPs, in order to appropriately control and minimize the discharge of pollutants to waters of the State and United States in violation of the Alameda Countywide National Pollutant Discharge Elimination System (“NPDES”) Municipal Storm Water Permit, Order No. R2-2003-0021 (NPDES Permit No. CAS0029831) (“Municipal Permit”); and
- Failure to obtain permit coverage for construction activities and the failure to prepare and implement an adequate storm water pollution prevention plan and to reduce or eliminate the discharge of sediment and other pollutants during storms using Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology in violation of NPDES General Permit for Storm Water Discharges Associated with Construction Activity, State Water Resources Control Board (“State Water Board”) Order 99-08-DWQ (“Construction General Permit”).

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

1. The Discharger is alleged to have violated provisions of the law for which the Regional Water Board may impose civil liability pursuant to CWC Section 13385.
2. Unless waived, the Regional Water Board will hold a hearing on this matter on **July 14, 2010** in the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California, 94612. The Discharger or its representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Water Board. An agenda will be mailed to the County no less than ten days before the hearing date. The County must submit any written evidence concerning this Complaint to the Regional Water Board no later than 5 pm on **June 14, 2010**, so that such comments may be considered. Any written evidence submitted to the Regional Water Board after this date and time will not be accepted or responded to in writing.

3. At the hearing, 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.

ALLEGATIONS

4. This Complaint addresses two separate construction projects owned and managed by the Discharger, and alleges the Discharger's continued failure to comply with the Construction General Permit and the Municipal Permit requirements, including but not limited to the implementation of inadequate and ineffective erosion and sediment control measures at construction sites.
5. The Construction General Permit regulates storm water discharges from construction activities that result in soil disturbances of at least one acre of total land area. It is the responsibility of the landowner to obtain coverage under the Construction General Permit prior to commencement of construction activities, by filing a Notice of Intent ("NOI") for each construction site. Additionally, permit coverage does not become effective until the applicant develops an adequate Storm Water Pollution Prevention Plan ("SWPPP") for the project, which is proposed in the NOI. A SWPPP shall contain site-specific best management practices ("BMPs"), including erosion and sediment control measures, that will reduce pollutants in storm water discharges to the Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) performance standards.
6. The Discharger is a Permittee under the Municipal Permit, which became effective on April 10, 2003. The Municipal Permit requires the Discharger to implement a program to ensure that all construction projects within the Discharger's jurisdiction, including Discharger and non-Discharger sponsored projects, comply with the provisions of the Construction General Permit. Pursuant to Provision C.2. of the Municipal Permit, the Discharger "shall implement control measures/BMPs to reduce pollutants in storm water discharges to the maximum extent practicable." Further, the Discharger shall implement and subsequently demonstrate the effectiveness of the Alameda Countywide Clean Water Program – Storm Water Quality Management Plan ("SWQMP"), which serves as the "framework for identification, assignment, and implementation of such control measures/BMPs" and contains performance standards that address construction site controls. The Municipal Permit incorporates by reference the SWQMP, which includes performance standards for all public and private new development projects and is an enforceable component of the permit.¹

Castro Valley Library Project

7. The Discharger is the owner of the Castro Valley Library ("Library") and its associated 2.94-acre site, located at 3600 Norbridge Avenue, Castro Valley, in unincorporated Alameda County. The Discharger's contractor, W.A. Thomas, Inc., constructed the Library. The Discharger failed to obtain coverage under the Construction General Permit prior to

¹ Municipal Permit; Finding 10. "The Management Plan, including the Performance Standards, is incorporated in the Permit by reference and enforceable as such, and is considered an enforceable component of this Order."

commencing construction activities at the Library site (“Library Project”), and neglected to implement adequate BMPs during the Library Project.

8. On May 27, 2008, Regional Water Board staff (“Staff”) inspected the Library Project and observed that the Discharger had graded the site without any erosion and sediment control measures in place. A portable toilet was improperly sited immediately adjacent to a restored reach of Castro Valley Creek. Further, Staff determined from the Regional Water Board’s records that the Discharger had not obtained coverage under the Construction General Permit for the Library Project, although such coverage was required because the project disturbed an acre or more of land.
9. Staff telephoned Gerald Loper, a Supervising Architect with the County of Alameda General Services Agency, the same day as the inspection, and informed him of the project’s permit violations. Staff requested that the Discharger (1) Prepare and submit an NOI and SWPPP; (2) Remove accumulated sediment from the street adjacent to the project site; and, (3) Immediately implement appropriate erosion control, sediment control, and site management measures. Mr. Loper stated that he would work on the Construction General Permit requirements and remove the accumulated sediment.
10. On May 29, 2008, two working days later, Board staff re-inspected the Library Project and observed no change in site conditions. Staff observed that the Discharger continued to grade the site without proper erosion and sediment control, failed to implement BMPs, and continued sediment tracking into the adjacent street, and the portable toilet was still located next to the creek.
11. On May 29, 2008, the Regional Water Board’s Watershed Division Chief issued a Notice of Violation (“NOV”) to the Discharger, which required the Discharger to implement appropriate erosion and sediment control measures consistent with the Construction General Permit by June 3, 2008. Under the authority of CWC section 13267, the NOV required the Discharger to submit a technical report by June 20, 2008 that included documentation of the following: (1) Permit coverage; (2) Development of a site-specific SWPPP; and (3) Implementation of the SWPPP. Additionally, the NOV required the Discharger to submit a list of all public projects disturbing one acre or more of land and proof of coverage under the Construction General Permit for those projects.
12. On June 20, 2008, the Regional Water Board received a letter from the Discharger that stated that the Library Project is the only current or “upcoming in the near future” public project disturbing one acre or more of land. The Discharger attached the NOI and SWPPP filed with the State Water Board for the Library Project to the letter. The Discharger failed to include any documentation of SWPPP implementation.
13. Staff e-mailed Mr. Loper on July 25, 2008, and acknowledged that the Discharger’s June 20, 2008 response provided documentation of coverage under the Construction General Permit and development of a SWPPP, but failed to include documentation of SWPPP implementation at the Library Project. The Discharger finally submitted the required information on July 31, 2008. After reviewing the complete submittal, Staff notified Mr. Loper on August 15, 2008 that the site’s SWPPP was incomplete and not site-specific and

that the site photographs provided by the Discharger indicated improper BMP implementation (i.e., incorrect use of wattles). Staff reinforced the need for full implementation of BMPs prior to the rainy season.

14. On February 18, 2009, Board staff conducted a compliance inspection of the Library Project and found that the site was again in violation of the Construction General Permit requirements. The violations included: unprotected soil stockpiles, unprotected graded areas; insufficiently protected storm drain inlets that contained sediment, demonstrating sediment had discharged into the storm drain and likely from there into a downstream receiving water; a complete lack of sediment control measures at the project site perimeter; and sediment tracking onto Norbridge Avenue. As a result, the Regional Water Board issued a second NOV on May 19, 2009.
15. After receiving the May 19, 2009 NOV, the Discharger implemented additional BMPs. Based on the February 18, 2009 inspection findings and the Discharger's online webcam photographs, it is evident that an effective project-specific SWPPP was not implemented for the entire 2008-2009 rainy season, from at least October 15, 2008 (beginning of the rainy season), through May 19, 2009 (issuance of NOV).²

Fairview Avenue Pathway Project

16. The Fairview Avenue Pathway Project ("Pathway Project") is located on Fairview Avenue between the 24600 and 24500 blocks, in unincorporated Alameda County, near Hayward, along the northeastern border of the Lone Tree Cemetery. The Pathway Project site was approximately 530 feet long and between 8 and 12 feet wide. The Pathway Project included installing a new storm drain system and a pedestrian walkway along the western side of the roadway. The storm drains discharge into Sulphur Creek approximately 0.35 miles downstream of the pathway project.
17. On February 9, 2009, Staff received a complaint that adequate erosion and sediment controls were not being implemented on the Pathway Project. Staff inspected the site on February 10, 2009, and documented inadequate site controls and evidence of sediment-laden discharges to the storm drain. Subsequently, a concerned citizen sent numerous reports and photographs to Regional Water Board staff (and to the Discharger), documenting sediment-laden water discharging from the site and entering storm drains during storm events, as well as deposits of sediment on streets and sidewalks.³
18. In an e-mail dated February 10, 2009, Staff directed the Discharger to implement effective erosion controls, implement effective sediment controls, and remove any accumulated sediment from the streets and sidewalks prior to the next rain and submit documentation demonstrating compliance by February 20, 2009.

² Staff obtained photographs from the Discharger's online webcam that the Discharger published on the internet at <http://www.flickr.com/photos/castrovalleylibrary/archives/>. Two-week increments of photographs from October 31, 2008 to May 20, 2009 are included in the administrative record.

³ All e-mail copies and photos taken by the concerned citizen and Regional Water Board staff are contained in the Administrative Record for this matter, which is located at the Regional Water Board Office in Oakland, CA.

19. The Discharger submitted photographs of implemented BMPs on February 19, 2009, but did not submit information demonstrating that they had removed the sediment from the streets, sidewalks, and inlets. Subsequent inspections by Staff found that the Discharger had not removed the accumulated sediment and that the implemented BMPs were not sufficient to prevent sediment discharges from the project site.
20. Staff conducted compliance inspections on February 17, 18, and 24, 2009, and March 3, 2009. During each of these inspections, Staff observed the following:
 - a. Erosion control BMPs consisted of gravel-bag check dams, intended to capture sediment traveling along the graded earthen pathway, limited use of erosion control matting, intended to keep graded soil in place, and filter bags installed in the storm drains to prevent sediment discharges. Significant areas of the project site remained exposed and unprotected, which caused the existing measures to be overwhelmed and allowed sediment-laden storm water to discharge directly into nearby storm drains.
 - b. Sediment discharged from the project site filled the check dams and rendered them ineffective. Failure to remove the sediment from the check dams prior to subsequent rain events caused sediment-laden water to overflow the check dams and discharge to the storm drain.
 - c. The Discharger failed to maintain existing BMPs and/or those BMPs were ineffective, evidenced by large amounts of sedimentation on adjacent streets, private property, and accumulated on the erosion control matting.

Staff communicated these violations to the Discharger with e-mails dated February 17, 2009, February 24, 2009, and March 3, 2009.

21. On March 4, 2009, the Discharger submitted photographs showing it had removed the sediment from the streets and cleaned out the filter bags in the storm drains. The photographs also showed piles of sediment remaining behind the check dams, which should have been removed in preparation for the next rain. The Discharger did not include information showing any corrective actions on the exposed and unprotected areas of the project site and did not evaluate why the site was continuing to erode and discharge sediment, or what corrective actions would be taken to address that problem.
22. On March 11, 2009, at the monthly Regional Water Board meeting, a concerned citizen submitted photographs of the pathway project taken on March 6, 2009. The photographs showed unmaintained check dams with significant amounts of sediment accumulated behind them and that no erosion control BMPs had been implemented on the exposed sloped areas. Although the Discharger repeatedly indicated that they had implemented additional erosion and sediment-control measures, Staff never observed adequate and effective control measures sufficient to meet permit standards implemented at the Pathway Project.
23. On April 1, 2009, the Regional Water Board's Watershed Division Chief issued an NOV to the Discharger for its failure to implement an effective combination of erosion and sediment control BMPs and to maintain the BMPs implemented, between February 7, 2009, and March 6, 2009. These failures violated the Discharger's Municipal Permit. Specifically, the

SWQMP Performance Standards for New Development and Construction Site Controls state, “each agency will ensure that storm water quality requirements are included in plans and contract specifications for municipal construction projects,”⁴ and require municipal inspectors to “require proper implementation and maintenance of erosion sediment controls and material/waste management BMPs ... to minimize the discharge of pollutants”.⁵ Within seven days of receipt, the NOV required the Discharger to submit a pollution prevention and control plan for the project. As of the date of this Complaint, the Discharger has not responded to the NOV. The Pathway Project is now complete.

STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BASED

24. Any person who is discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, and fails to file a report of discharge when so requested by the Board, may be civilly liable pursuant to CWC Section 13261(a) and (b)(1). Pursuant to this section, the Board may impose administrative civil liability on a daily basis, not to exceed \$1,000 for each day in which a violation occurs.
25. The Discharger violated applicable sections of the Construction General Permit and its Municipal Permit, and discharged sediment-laden storm water and polluted non-storm water while being out of compliance with those permits. These are violations for which the Board may impose administrative civil liability pursuant to CWC Section 13385(a)(2) and (c), on a daily basis, not to exceed \$10,000 for each violation for each day in which the violation occurs. The authority and process for imposing civil liability are set forth in CWC Section 13323.

ALLEGED VIOLATIONS AND MAXIMUM CIVIL LIABILITY

Castro Valley Library Project

26. Given that the Discharger is a Permittee under the Municipal Permit, and has had permit coverage continuously since October 16, 1991, the Discharger had adequate notification of the Construction Permit Requirements, prior to staff’s telephone notification on May 27, 2008.⁶ Therefore, the Discharger failed to file an NOI and conducted construction activities without coverage under the Construction General Permit for at least 53 days, from April 21, 2008 (start of construction), to June 13, 2008 (NOI filing date), in violation of Construction General Permit Provision C.1. Thus, pursuant to CWC Section 13261(a) and (b)(1), the Discharger is subject to a maximum liability of \$1,000 per day for 53 days, for a maximum potential liability of \$53,000.
27. The Discharger failed to prepare and implement an adequate SWPPP in accordance with Construction General Permit Section A, and failed to reduce or eliminate the discharge of sediment and other pollutants during storms using Best Available Technology Economically

⁴ SWQMP, July 2001 – June 2008, Alameda Countywide Clean Water Program; Section 5 Performance Standards; New Development and Construction Site Controls; subsection I.,3.

⁵ SWQMP, July 2001 – June 2008, Alameda Countywide Clean Water Program; Section 5 Performance Standards; New Development and Construction Site Controls; subsection VI.6.d..

⁶ SWQMP, July 2001 – June 2008, Alameda Countywide Clean Water Program; Section 5 Performance Standards; New Development and Construction Site Controls; subsection V. State General Permit.

Achievable and Best Conventional Pollutant Control Technology in violation of Construction General Permit Provision C.2 for at least 48 days from June 13, 2008, to July 31, 2008 (date of complete response to NOV), and for at least 217 days from October 15, 2008, to May 19, 2009. Thus, the Discharger is subject to a maximum liability of \$10,000 per day for a total of 265 days, for a maximum potential liability of \$2,650,000.

Fairview Avenue Pathway Project

28. The Discharger failed to properly implement and maintain an effective combination of erosion and sediment controls, including material/waste management BMPs, in order to appropriately control and minimize the discharge of pollutants to waters of the State and United States, for at least 28 days from February 7, 2009 (date of first photographs), through March 6, 2009 (date of last photographs), in violation of the Municipal Permit and SWQMP. Thus, the Discharger is subject to a maximum liability of \$10,000 for 28 days, for a maximum potential liability of \$280,000.
29. The total maximum civil liability that may be imposed against the Discharger, for the violations described above, is \$2,983,000.

CONSIDERATION OF 13385(e) FACTORS

30. Pursuant to CWC Section 13385(e), the Regional Water Board must consider the following factors in determining the amount of civil liability:

The Nature, Circumstances, Extent, and Gravity of the Violation:

31. The Construction General Permit relies on Discharger self-determination and self-reporting. The Discharger initiated construction of the Library Project on April 21, 2008, without obtaining Construction General Permit coverage. Beginning June 13, 2008, as a permittee of the Construction General Permit for the Library Project, the Discharger was required to comply with its provisions. Throughout the construction phase, the Discharger consistently failed to implement and maintain an effective SWPPP, resulting in uncontrolled discharges of pollutants in storm water to waters of the State and United States. These actions are particularly problematic given that, as a permittee under the Municipal Permit, the Discharger has the responsibility to ensure construction projects within its jurisdiction comply with the same requirements. When the Discharger itself fails to obtain coverage and comply with permit requirements, it undermines the Construction General Permit program and sends the wrong message to private construction project proponents within the Discharger's jurisdiction. Additionally, the requirements of the Construction General Permit are intended to be implemented proactively, so as to prevent, reduce, and minimize adverse water quality impacts during storm events, with ongoing maintenance of source control measures, instead of relying on after-the-fact sediment removal and clean-up methods.
32. Similarly, during the Fairview Avenue Pathway Project, the Discharger engaged in public construction activity without adequate and effective erosion and sediment control measures (BMPs) in place, despite repeated attempts by Staff to communicate the project deficiencies and required corrective actions.

33. The Castro Valley Library Project includes a restored stretch of Castro Valley Creek on-site. Sediment-laden storm water discharges from the Library Project may have had significant adverse impacts to the creek's newly planted riparian corridor. Although Castro Valley Creek is largely underground in its lower reaches in the city of Castro Valley with more natural reaches toward the headwaters, it is also part of the San Lorenzo Creek Watershed, which is known to support migrating fish populations.
34. Storm water from the Fairview Avenue Pathway Project discharged to storm drains approximately 0.5 miles upstream of the Sulphur Creek Nature Center, which also is located on a restored stretch of Sulphur Creek. This area of the creek contains rich aquatic habitat that is routinely studied and observed at the nature center. Excess sediment in storm water likely had deleterious effects on such habitat.
35. To Staff's knowledge, specific observations of potential discharges to downstream receiving waters were not made. Similarly, no efforts were made to remove sediment from locations to which it had discharged downstream. The Discharger's construction activities and associated permit violations took place between April 21, 2008, and May 19, 2009, causing or threatening to cause a condition of pollution with each storm event during that time period. Depending on the duration and volume of rain, downstream sediment deposition could have been light and localized, or caused significant adverse impacts in nearby habitats and also carried far downstream.
36. These discharges can, and likely did, have deleterious effects on downstream aquatic environments and a variety of aquatic organisms. Sediment-laden storm water discharges from both of the Discharger's projects likely resulted in adverse water quality impacts; including reduced light penetration, which decreases rates of photosynthesis within the food chain; reduction in respiratory capacity of fish gills; and may have resulted in adverse impacts to the downstream tributary habitats including gravel beds that support spawning, resulting in potentially lethal effects to eggs, decreased juvenile survival rates, and reduction in fish-feeding efficiency.

Toxicity of Discharge:

37. This factor is not addressed herein because the Complaint imposes penalties for non-compliance with Permit requirements that are non-discharge violations. While there were discharges of turbid, sediment-laden storm water during the periods of violation, the toxicity of these discharges is considered above, in the section titled "Nature, Circumstances, Extent, and Gravity of the Violation."

Discharger's ability to pay and continue business:

38. Staff believes the Discharger is able to pay the proposed liability. The Discharger's proposed budget for the 2009-2010 fiscal year totals \$2.4 billion. This is an increase of \$9.3 million from the 2008-2009 budget. The Discharger may submit information demonstrating an inability to pay as a part of its response to this Complaint, and as described in the Standard Hearing Procedure issued with this Complaint.

Susceptibility to Cleanup

39. This factor is not addressed herein because the Complaint imposes penalties for non-compliance with Permit requirements that are non-discharge violations.

Voluntary cleanup actions taken:

40. This factor is not addressed herein because the Complaint imposes penalties for non-compliance with Permit requirements that are non-discharge violations. The Discharger has repeatedly proposed and claimed to have taken actions to prevent future violations; however, the violations remained when Staff conducted subsequent inspections. Further, these steps are not considered voluntary, as they are necessary to comply with the Construction General Permit and the Municipal Permit, respectively, and may have only occurred in response to Regional Water Board enforcement.

Prior history of violations:

41. The Regional Water Board has not issued other enforcement actions against the Discharger that set forth violations of the Construction General Permit and/or the Municipal Permit similar to those addressed herein.

Degree of culpability:

42. The Discharger knew, or should have known, of the requirement to obtain coverage under the Construction General Permit for all construction projects, including public agency construction projects, that disturb one acre or more of land. Under the Municipal Permit, the Discharger is responsible for ensuring that private projects obtain Construction General Permit coverage prior to grading.⁷ Additionally, the Municipal Permit specifically identifies the need for public agency construction projects to comply with the Construction General Permit, explicitly stating that one of its objectives is “to ensure that public works construction projects conform to the same standards as private projects.”⁸ The Discharger is a Permittee under the Municipal Permit, and has had that permit coverage continuously since October 16, 1991.

43. The Discharger is fully culpable for the violations cited in this Complaint. It clearly should have known and should have obtained coverage and complied with the terms of the Construction General Permit for its Library Project. Similarly, the Discharger failed to implement adequate erosion and sediment control measures for its Fairview Avenue Pathway Project, causing and/or threatening to adversely impact the waters of the state it is charged to protect as a permittee under the Municipal Permit. Under its Municipal Permit, the Discharger is responsible for educating the general public regarding storm water pollution prevention, including regulatory requirements for construction activity and water quality protection. However, the Discharger failed to hold itself to the same standards for its public projects. The

⁷ SWQMP, July 2001 – June 2008, Alameda Countywide Clean Water Program; Section 5 Performance Standards; New Development and Construction Site Controls; Section v. State General Permit.

⁸ SWQMP, July 2001 – June 2008, Alameda Countywide Clean Water Program; Section 3 Component Objectives and Tasks; New Development and Construction Controls; Objective 3.

Discharger did not voluntarily seek to come into compliance with permit requirements in the absence of communications from Staff, including the issuance of NOVs. For both projects, the Discharger inadequately responded to the NOVs and did not fully comply with permit requirements in a timely manner. The Discharger indicated that it had implemented additional erosion and sediment control measures at each site, however, Staff did not observe a timely, adequate, or effective combination of control measures sufficient to meet permit standards, nor was the Discharger fully responsive to Staff's multiple communications with the Discharger.

44. The allegations contained in this Complaint illustrate the Discharger's clear disregard for the Construction General Permit and Municipal Permit requirements.

Economic benefit or savings resulting from the violation:

45. During the period of violation addressed by this Complaint, the Discharger realized an economic benefit by not expending funds to implement BMPs, to appropriately modify and maintain BMPs that were implemented, and to prepare and revise as necessary a site-specific SWPPP for both projects. BMP-related sources of economic benefit likely included the cost of materials, maintenance costs, personnel costs (hourly wage or salary, time and money spent to train site personnel), and the time to conduct routine monitoring required by the Construction General Permit and the Municipal Permit. The Discharger's staff also indicated that stopping the progress of the Library Project was not desirable for the Discharger because it would delay the opening of the library for the residents, which may have contributed to its unwillingness to slow construction in order to address BMP implementation.
46. For construction activity in California, approximately \$2,000 to \$6,000 per acre is needed to provide the necessary erosion and sediment control measures for construction sites depending on the slope and soil type. Additionally, the application of straw mulch, alone, is approximately \$2,000 per acre.⁹ The Library Project site is 2.94 acres, and the pathway project site was approximately 6,360 square feet in size. Given their proximity to creeks and storm drains, an effective combination of both erosion and sediment control BMPs was critical to protect the site. Limited BMPs were implemented on these projects. Therefore, the economic benefit received by the Discharger by not installing and maintaining an effective combination of erosion and sediment control BMPs is estimated to be approximately \$2,000 per acre. The entirety of each project site was not disturbed during construction. Staff conservatively estimated that erosion and sediment control may have been necessary on a total of 2 acres for both projects, resulting in a minimum estimated cost savings of approximately \$4,000 for not fully implementing and maintaining necessary BMPs. Based on this estimation, the proposed civil liability likely fully recovers and exceeds the Discharger's economic benefit resulting from the alleged violations.

⁹ Soil Stabilization BMP Research for Erosion and Sediment Controls; Cost Survey Technical Memorandum; California Department of Transportation; July 2007.

Other matters that justice may require:

47. Staff time to investigate the violations and prepare the Complaint and supporting evidence is estimated to be 180 hours. Based on an average cost to the State of \$150 per hour, the total cost for Staff time is \$27,000.
48. Staff is required to public notice this Complaint in a newspaper of general circulation within the area affected by the facility or activity. Publication costs approximately \$600. The total staff costs for the investigation, preparation, and issuance of this Complaint are thus \$27,600.
49. Staff recognizes the difficult economic climate within which local governments are currently operating; however, effective implementation of permit requirements is expected for all private and public permittees. Given this consideration, the goal of the proposed penalty is to communicate a consistent message that compels compliance for both public and private projects, while balancing the needs of local government to manage and fund other valuable local government programs.
50. Based on the above factors, the Assistant Executive Officer proposes civil liability be imposed on the Discharger in the amount of **\$102,600** for the violations cited above. This amount includes Staff costs of \$27,600.
51. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to increasing the proposed amount to account for the costs of enforcement (including staff, legal, and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.
52. The Discharger may submit information demonstrating an inability to pay the proposed liability, as discussed in the attached ACL Fact Sheet. Such information should substantively demonstrate that the Discharger cannot, and could not, pay the proposed liability.
53. Further, failure to comply with the Construction General Permit and Municipal Permit or subsequent amendments thereof beyond the date of this Complaint may subject the Discharger to further administrative civil liability, and/or other appropriate enforcement action(s), including but not limited to referral to the Attorney General.
54. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code 21000 et seq.) in accordance with Section 15321 of Title 14, California Code of Regulations.

Thomas E. Mumley
Assistant Executive Officer

April 15, 2010
Date

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent the County of Alameda (hereinafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R2-2010-0061 (hereinafter the “Complaint”). I am informed that California Water Code section 13323, subdivision (b), states that, “a hearing before the regional board shall be conducted within 90 days after the party has been served with the complaint. The person who has been issued a complaint may waive the right to a hearing.”

OPTION 1: PAY THE CIVIL LIABILITY

(Check here if the Discharger waives the hearing requirement and will pay the liability in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **\$102,600** by check that references “ACL Complaint No. R2-2009-0055.” made payable to the *State Water Pollution Cleanup and Abatement Account*. The Regional Water Board must receive payment **by May 17, 2010** or the Regional Water Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source (excluding the Regional Water Board’s Prosecution Team) during this comment period, the Regional Water Board’s Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Assistant Executive Officer of the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. 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.

OPTION 2: REQUEST A TIME EXTENSION

(Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)

I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Regional Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board delay the hearing so that the

Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

OPTION 3: ENGAGE IN SETTLEMENT DISCUSSIONS

(Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)

I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Regional Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Water Board to approve the extension.

OPTION 4: SUBMIT A SUPPLEMENTAL ENVIRONMENTAL PROJECT

(Check here if the Discharger waives the hearing requirement and will submit a proposed compliance project or supplemental environmental project. If the proposal is rejected, the Discharger will pay the liability in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Prosecution Team has authorized the Discharger to submit a proposed Supplemental Environmental Project in lieu of payment of \$37,500 of the proposed civil liability. I agree to submit the proposal and the remainder of the proposed civil liability **by June 14, 2010**. I understand that the proposal must conform to the requirements specified in the State Water Resources Control Board's Water Quality Enforcement Policy. If I receive written notice from the Prosecution Team that the Discharger has failed to timely submit a proposal or that the Prosecution Team has rejected the proposal, I certify that the Discharger will remit payment of the remainder of the proposed civil liability in the full amount of \$37,500 by check that references "ACL Complaint No. R2-2010-0061" made payable to the "State Water Pollution Cleanup and Abatement Account" within ten days of the notice. If payment is not received in a timely manner, the Regional Water Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I understand the acceptance or rejection of the proposed supplemental environmental project and payment of the remainder of the proposed civil liability constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source (excluding the Regional Water Board's Prosecution Team) during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the Complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Assistant Executive Officer of the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger

having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

- d. 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)