

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2007-0508

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

JMC HOMES
LONGMEADOW ESTATES
PLACER COUNTY

This complaint is issued to JMC Homes (hereafter Discharger) based on a finding of violations of Clean Water Act Section 301, California Water Code Section 13376, and the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 Order No. 99-08-DWQ, pursuant to the provisions of California Water Code Section 13385, which authorizes the imposition of an Administrative Civil Liability.

The Executive Officer of the Regional Water Quality Control Board, Central Valley Region, (Water Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger is the owner and developer of the Longmeadow Estates, a 99.8-acre construction project in Placer County. Runoff from the site discharges both to the City of Roseville's storm drain system which discharges into Pleasant Grove Creek and directly into an unnamed tributary to Pleasant Grove Creek.
2. Pleasant Grove Creek is a tributary to the Sacramento River. The existing beneficial uses of Pleasant Grove Creek are municipal and domestic supply; agriculture; recreation; warm and cold freshwater habitat; warm and cold migration; spawning; and wildlife habitat.
3. On 19 August 1999, the State Water Resources Control Board adopted NPDES General Permit No. CAS000002, Order No. 99-08-DWQ (General Permit), implementing the Waste Discharge Requirements for storm water discharges associated with construction activity.
4. The General Permit requires that dischargers of storm water to surface waters associated with construction activity file a Notice of Intent (NOI) to obtain coverage under the General Permit and to utilize best available technology economically achievable (BAT) and best conventional control technology (BCT) to reduce storm water pollution.
5. The Clean Water Act and California Water Code require that dischargers obtain coverage under the General Permit prior to commencement of construction activities. The Discharger obtained coverage under the General Permit and was assigned WDID No. 5S31C334656 on 7 June 2005.

6. The Discharger is alleged to have violated provisions of law for which the Water Board may impose liability under California Water Code Section 13385(c)(2).

7. General Order No. 99-08-DWQ states, in part, the following:

“A. *DISCHARGE PROHIBITIONS:*

3. *Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.”*

“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 Section 13376 of the California Water Code prohibit the discharge of pollutants to surface waters except in compliance with an NPDES permit.

8. The following events pertain to the history of the site:

- a. On 4 November 2004, Water Board staff inspected the site and found violations of the General Permit, including inadequate erosion and sediment control Best Management Practices (BMPs) and sediment-laden storm water discharges.
- b. On 9 November 2004, Water Board staff issued a Notice of Violation (NOV) to Roseville Tech Park Associates (the owner listed on the Notice of Intent) for violations at Longmeadow Estates.
- c. On 3 December 2004, the Discharger responded in writing to the NOV, stating that they would implement additional BMPs at the site, including installing a system using Chitosan to treat the storm water runoff.

- d. On 6 June 2005, the Discharger submitted a Notice of Intent to obtain coverage under the General Permit for Longmeadow Estates.
 - e. On 15 December 2005, the Discharger received a rainy season preparation reminder from Water Board staff that included the reminder to prevent erosion by stabilizing all disturbed soil at the site.
9. The Discharger violated Discharge Prohibition A.3, C.2 and Section A, Part 6 of the General Permit. These violations were caused by the Discharger's failure to implement an effective combination of sediment and erosion control BMPs, which resulted in sediment-laden discharges to the storm drain system and a tributary to Pleasant Grove Creek and failure to meet the BAT/BCT performance standard. Pursuant to California Water Code Section 13385 (a)(2), civil liability may be imposed for the following violations:
- a. On 28 November 2005, Water Board Staff inspected the construction site and observed poorly installed and maintained BMPs throughout the production areas and a portable toilet close to the street. There was sediment on the sidewalk, in the gutter, and on the street, resulting in a sediment-laden discharge into the storm drain system that flows to an unnamed tributary to Pleasant Grove Creek. Water Board staff contacted City of Roseville (local regulatory entity) staff to ensure that the City's storm water inspector was aware of the issues at this site.
 - b. On 1 December 2005, Water Board and City of Roseville staff inspected the construction site and observed violations of the General Permit. The production areas lacked an effective combination of erosion and sediment control BMPs, which resulted in a discharge of sediment-laden water into the storm drain system. In addition, stockpiles were not covered, and sediment was observed in the gutters and on the street. Staff spoke with the Discharger's representative about the issues at the site.
 - c. On 6 December 2005, a NOV was issued for the violations noted on 28 November and 1 December. The NOV was issued for violations of Discharge Prohibitions A.3 and Section A, Part 6 of the General Permit. The discharge of sediment-laden storm water to the City of Roseville's storm drain system which leads to Pleasant Grove Creek threatened to cause pollution, contamination, or nuisance in violation of Discharge Prohibition A.3. The inadequate implementation of BMPs violated Section A, Part 6 of the General Permit which requires that, "At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control BMPs on all disturbed areas during the wet season."
 - d. On 14 December 2005, City of Roseville staff observed Lund Construction, a subcontractor for the owner, pumping a pond of sediment-laden storm water onto a

- street. This discharge was observed flowing into the storm drain system, which flows directly into an unnamed tributary to Pleasant Grove Creek.
- e. On 15 December 2005, a NOV was issued for the violation noted on 14 December at the construction project. The NOV was issued for violation of Discharge Prohibitions A.3 of the General Permit.
 - f. On 19 December 2005, City of Roseville staff observed a sediment-laden storm water discharge flowing into the storm drain system, which resulted in a discharge to an unnamed tributary to Pleasant Grove Creek. The BMPs installed in and around the area of discharge were not effectively maintained and did not meet the BAT/BCT standard required by the General Permit.
 - g. On 21 December 2005, City of Roseville staff observed a sediment-laden storm water discharge from a poorly protected drain inlet into an unnamed tributary to Pleasant Grove Creek. The area of discharge was the same area where discharges were observed on 19 December. City staff shared their findings and photographs documenting the violations with Water Board staff. Water Board staff evaluated the information and determined the Discharger to be in violation of the General Permit.
 - h. On 22 December 2005, City of Roseville staff observed a sediment-laden storm water discharge from the construction site into an unnamed tributary to Pleasant Grove Creek. The area of discharge was the same area where the discharge was observed on 19 and 21 December. City staff shared their findings and photographs documenting the violations with Water Board staff. Water Board staff evaluated the information and determined the Discharger to be in violation of the General Permit.
 - i. On 28 December 2005, City of Roseville staff observed a sediment-laden discharge from the construction site into an unnamed tributary to Pleasant Grove Creek. The area of discharge was the same area observed on 19, 21, and 22 December. City staff observed that both the erosion and sediment control BMPs in and around the discharge area required repair and maintenance. City staff shared their findings and photographs documenting the violations with Water Board staff. Water Board staff evaluated the information and determined the Discharger to be in violation of the General Permit.
 - j. In late December 2005, as a follow-up to the City's inspections, Water Board staff contacted representatives of the Discharger regarding the problems found at the site and were given assurances that they would be addressed.
 - k. On 21 March 2006, Water Board staff conducted an inspection of the site and found inadequate erosion and sediment control BMPs in violation of the General Permit.

- I. On 4 April 2006, Water Board staff conducted another inspection of the site and found lack of maintenance of erosion and sediment control BMPs and a sediment-laden discharge to an unnamed tributary to Pleasant Grove Creek in violation of the General Permit. Water Board staff notified the Roseville storm water inspector of the on-going violations at this site.

9. Section 13385 of the California Water Code states, in part:

“(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376

(2) Any waste discharge requirements or dredged and fill material permit.

(5) Any requirements of Sections 301, 302, 306, 307, 308, 318, or 405 of the Federal Water Pollution Control Act as amended.”

“(c) Civil liability may be imposed administratively by the State Board or a Regional Board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the... following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.”

“(e) In determining the amount of liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation, or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefits or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.”

10. Pursuant to California Water Code Section 13385(c), the Discharger has a maximum civil liability of \$11,066,000. The maximum liability is based on 15 days of violations and the number of gallons discharged from the site on 28 November and 1 December 2005. The 15 days of violation include 29 and 30 November and 16, 17, 18 and 20 December 2005 since those days fall between days when the site was inspected and found to be in violation of the General Permit.

11. The Discharger saved approximately \$120,000 by not implementing adequate erosion and sediment control BMPs, for not maintaining the BMPs that were implemented, and for not properly training site employees. Based on a survey of consultants, it costs from \$2000 to \$6000 per acre to provide the necessary erosion and sediment control measures for construction sites depending on the soil type. The soil on the site has relatively high clay content; therefore, it is important to have both erosion and sediment control BMPs to protect the site. In 2004, the Discharger installed an Advanced Treatment System (ATS) system in addition to erosion and sediment control BMPs to protect the project. The Discharger did not use an ATS system during the 2005-2006 wet season. Since there are some BMPs installed at this site, the additional cost of installing and maintaining an effective combination of erosion and sediment control BMPs at this site was estimated to be \$1500 per acre. This is a very conservative estimate given the site soil conditions. To account for un-impacted areas, Water Board staff conservatively estimated that erosion and sediment control was necessary on 80 of the 99.8 acres. The economic savings was obtained by multiplying the 80 acres by \$1500 per acre.
12. Water Board staff spent a total of 100 hours investigating this incident and preparing this Complaint. The total cost for staff time is \$8,000 based on a rate of \$80 per hour.
13. The site had violations in 2004 that were addressed through the installation of an advanced treatment system. Violations were noted again in November and December of 2005 by Water Board staff. Staff contacted the Discharger and issued two NOVs. The Discharger responded to the NOVs with assurances that the site would come into compliance with the General Permit. The Discharger also provided information on additional BMPs installed. In March and April 2006, Water Board staff inspected the site and noted more violations of the General Permit resulting from the lack of maintenance of BMPs. This shows that the Discharger has been repeatedly in violation of General Permit.
14. Issuance of this Administrative Civil Liability Complaint to enforce California Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Title 14 California Code of Regulations, Enforcement Actions by Regulatory Agencies, Section 15321(a)(2).
15. On 12 April 2006, the Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R5-2006-0507 to the Discharger in the amount of five hundred thousand dollars (\$500,000) for violations of the Clean Water Act section 301, California Water Code section 13376, and the NPDES General Permit No. CAS000002 Order No 99-08-DWQ, pursuant to provisions of California Water Code section 13385.
16. Following issuance of ACL Complaint No. R5-2006-0507, the Discharger and the Executive Officer conferred for the purpose of settling this matter and the allegations herein without a formal hearing. After arms-length negotiations regarding the existence of the violations, the calculation of the statutory maximum liability, the estimates of the alleged discharge volume, the acreage affected, and the magnitude of the proposed

administrative civil liability, the Discharger and the Executive Officer arrived at a mutually acceptable resolution of the proposed administrative civil liability based on information contained in the record of the Water Board. The Discharger and the Executive Officer have agreed to settle the administrative civil liability for three hundred and fifty thousand dollars (\$350,000).

17. The Executive Officer accordingly now issues ACL Complaint No. R5-2007-0508, with a proposed administrative civil liability of three hundred and fifty thousand dollars (\$350,000). This Complaint rescinds and replaces ACL Complaint No. R5-2006-0507.

JMC HOMES is hereby given notice that:

1. Administrative Civil Liability Complaint No. R5-2006-0507 is hereby rescinded and replaced with this Complaint.
2. The Executive Officer of the Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of three hundred and fifty thousand dollars (\$350,000) which includes \$8,000 in staff cost and \$120,000 to recover the economic benefit derived from the acts that constitute the violations. The amount of the proposed liability is based on a review of the factors cited in Water Code Section 13385 and the State Water Resources Control Board's Water Quality Enforcement Policy.
3. A hearing on this matter will be scheduled for the **21/22 June 2007** Water Board meeting unless the Discharger agrees to waive the hearing and pay the proposed civil liability in full.
4. If a hearing in this matter is held, the 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.
5. The Discharger may waive the right to a hearing. If the Discharger wishes to waive the hearing, the Discharger must, **within 30 days of this complaint**, sign and return the waiver to the Water Board's office with a check in the amount of the civil liability made payable to the "State Water Pollution Cleanup and Abatement Account." Any waiver will not be effective until 30 days from the date of this complaint to allow interested persons to comment on this action.

PAMELA C. CREEDON, Executive Officer

9 March 2007

Date

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent the JMC Homes (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2007-0508 (hereinafter the "Complaint");
2. I am informed of the right provided by California Water Code Section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and
4. I certify that the Discharger will remit payment for the civil liability imposed in the amount of three hundred and fifty thousand dollars (\$350,000) by check, which contains a reference to "ACL Complaint No. R5-2007-0508 " and is made payable to the "*State Water Pollution Cleanup and Abatement Account*".
5. I understand the payment of the above amount constitutes a settlement of violations alleged in the Complaint that will not become final until after a public comment period.
6. I understand that the Executive Officer has complete discretion to modify or terminate the Complaint.
7. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(Print Name and Title)

(Signature)

(Date)