

California Regional Water Quality Control Board
North Coast Region

COMPLAINT ORDER NO. R1-2004-005

FOR

ADMINISTRATIVE CIVIL LIABILITY

IN THE MATTER OF

VINTAGE GREENS LLC

FOR

VIOLATIONS OF WASTE DISCHARGE REQUIREMENTS
STATE WATER BOARD ORDER NO. 98-08DWQ
WDID NOS. 149S314410, 149S317862 and 149S317863

Sonoma County

The Executive Officer of the California Regional Water Quality Control Board, North Coast Region (hereinafter the Regional Water Board), hereby gives notice that:

1. The Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint (ACLC) No. R1-2003-0126, to Vintage Greens LLC on October 28, 2003. Due to a change in the scheduling of the Regional Water Board meeting, the Public Hearing for this enforcement action, originally scheduled for January, 2004, has been rescheduled to February 11, 2004. State law requires that an ACLC must be issued within ninety days of the scheduled date of the Public Hearing. Since the revised hearing date puts our original ACLC mailing date more than ninety days from the February 11, 2004 hearing, the Regional Water Board must issue a new ACLC complaint to Vintage Greens LLC. This ACLC will replace ACLC No. R1-2003-0126.
2. On November 1, 2000, Vintage Greens LLC was issued a notice of permit coverage under the statewide National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated With Construction Activity (Construction General Permit), Water Quality Order 99-08-DWQ, ID No. 149S314410, 149S317862, and 149S317863 for construction of the Vintage Greens 2, 3 and 4, a 65-acre phased construction site located off of Mitchell Road (1/2 mile west of Highway 101) in Windsor, Sonoma County, California (Site).
3. Site construction commenced during the winter of 2001 and is still ongoing as of the date of this Complaint. The construction project involves extensive site grading and soil movement. On numerous occasions during the fall and winter of 2002/2003, Regional Water Board staff

(staff) performed erosion/sediment control inspections of this Site. Staff inspections found on multiple occasions that there were major portions of the development where erosion and/or sediment controls were either ineffective, non-existent or had been destroyed. Staff discussed their concerns regarding the inadequate sediment/erosion control measures to site personnel on several occasions. Staff alerted site personnel about how site conditions, if not upgraded, would result in significant sediment discharges to Windsor Creek, which borders the north side of the development and would result in enforcement actions by the Regional Water Board.

4. Efforts to control soil on-site have relied exclusively on sediment controls, practices that are employed in an attempt to remove sediments from storm water runoff. Few efforts were used to employ erosion control, those practices that are employed to try and keep dirt from becoming entrained in storm water runoff. The lack of significant erosion control measures put a heavy burden on the sediment control measures. The result of the lack of erosion control measures and inadequate and/or non-existent sediment control measures created a situation of significant sediment discharges from the site.
5. The first significant storm event of the season occurred on November 7-9, 2002. Specific Regional Water Board staff recommendations were made during the November 7, 2002 inspection of the site. The recommendations stressed the need to fill in the hundreds of eroded gullies that existed throughout the site, and the need for establishing a groundcover or initiation of other stabilization measures as a means of controlling erosion. A second set of storms during early December resulted in massive volumes of sediments discharging to the lower northwest corner of the development and to Windsor Creek. Site personnel were made aware of the Regional Water Board staff's intention to proceed with enforcement actions due to the lack of installation of effective erosion controls during the period between the early November and early December storm events.
6. Late December and early January inspections revealed that major portions of the site, both those areas where home construction was occurring, as well as those areas graded but not yet under construction, continued to be sources of sediment discharge. Sediments continued to flow into Windsor Creek throughout December and early January, gullies continued to deepen and sediment controls that were in place continued to fail. Maintenance of on-site sediment controls, other than the cleaning out inlet protections in areas of home construction, were not performed on a timely basis.
7. As of early January there had still been no effort to fill gullies, repair damaged management practices, remove sediments or apply groundcover. As a result, subsequent major storm events had continued to discharge massive amounts of sediments into Windsor Creek. Numerous site inspections and meetings with representatives of the Discharger failed to result in significant improvement. Staff re-inspected the site on January 15, 2003. Some

sediment control work, in the form of additional haybale checkdams and gully filling, had begun. However, no seeding and/or groundcover work, or maintenance of collected sediments, had been performed. The inspection revealed that a significant amount of maintenance and erosion control work was still necessary.

8. The following facts are the basis for the alleged violations in this matter:

- a. Erosion and sediment control (ESC) efforts on the active construction portion of this site were inadequate. Inlet controls, which were themselves adequate, were continually overloaded by sediments coming off every homebuilding site. Soils stockpiled between the house foundations and the street freely eroded onto the streets. The majority of the silt fencing was either placed incorrectly, or knocked down. No significant response was made after storm events to correct problems created by storm water runoff.
- b. The areas on-site that have been graded, yet remain undeveloped, originally contained no ESC management practices, and until mid-January contained minimal controls. Scores of deep gullies existed for several months, and massive volumes of sediments choked the lone drop inlet that drained the area in question. Successive site inspections over several months revealed little or no effort to stop the flow of sediments which have discharged to Windsor Creek, or threatened to discharge in future storm events.
- c. Silt fencing in place parallel to Windsor Creek was severely damaged during the initial November storm. Three months later this silt fence, which was the only sediment control device between the creek and the northeast quarter of the development, was still lying flat on the ground. Inspections indicated that little or no maintenance was performed on these sediment control devices.
- d. The development's storm water discharge outfall contained a rock riprap apron that was partially eroded during the November 7, 2002 storm event. In the subsequent four weeks of dry weather that followed that storm, nothing was done to repair that apron. The series of December storms proceeded to produce runoff that further damaged the riprap areas and exposed soil the underlying soils. This condition created a huge eroded cavity along the full length of the discharge apron.
- e. Staff noted significant volumes of sediment-laden storm water runoff actively discharging from the site into Windsor Creek during four separate site inspections. Although a case can be made that sediments discharged from this site to Windsor Creek during every significant runoff generating event during the months of November, December and early January, this complaint is based only on those days of documented discharge.
- f. The attached photographs depict site conditions during the summer, fall and early winter at Vintage Greens 2. Turbid water is shown discharging into drop inlets on-site, and discharging off-site directly into Windsor Creek.
- g. Water Quality Order No. 99-08-DWQ, which is applicable to this project, contains the following Discharge Prohibition:

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

And the following Receiving Water Limitations:

“B.1. Storm water discharges and authorized nonstorm water discharges to any surface or ground water shall not adversely impact human health or the environment.

B.2. The [Storm Water Pollution Prevention Plan (SWPPP)] developed for the construction activity covered by this General Permit shall be designed and implemented such that storm water discharges and authorized non-storm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable Regional Water Board’s Basin Plan.

Observations by staff from inspections performed on November 7, 2002, December 13, 2002, December 19, 2002 and January 13, 2003 confirmed that conditions of pollution and/or nuisance were occurring as a result of sediment-laden storm water runoff discharged from this development site into the municipal storm drain system. These storm drains discharge directly to waters of the United States. The receiving waters have been listed as impaired due to excessive amounts of sediment. Vintage Greens LLC violated Water Quality Order 99-08-DWQ, Section A.3, by discharging storm water runoff to state waters that caused, or threatened to cause pollution, contamination, or nuisance.

- h. Vintage Greens LLC violated Water Quality Order 99-08-DWQ, Section B.1, by discharging sediment-laden storm water runoff into Windsor Creek, in amounts that could result in short and long-term adverse impacts to the environment.
- i. Vintage Greens LLC violated Water Quality Order 99-08-DWQ, Section B.2, by not implementing its SWPPP so as to minimize or eliminate the discharge of pollutants contained storm water runoff to state waters that caused, or threatened to cause pollution, contamination, or nuisance.
- j. Section 13385(a)(4) of the California Water Code provides for the imposition of civil liabilities against dischargers who violate any order or prohibition issued pursuant to California Water Code Section 13243 or Article 1 of Chapter 5. As detailed above, SCWA violated the discharge prohibitions and requirements of Water Quality Order No. 99-08-DWQ. Section 13385(c) provides that the maximum amount of civil liability that may be imposed by the Regional Water Board is \$10,000 per day of violation, plus where there is discharge in excess of 1,000 gallons that is not susceptible to cleanup or cannot be cleaned up, an additional liability not to exceed \$10 per gallon of waste discharged and not cleaned up in excess of 1,000 gallons. The maximum civil penalty that could be imposed against Vintage Greens LLC in this matter is calculated as follows:
Four days of observed discharge violations that occurred on November 7, December 13, December 19, 2002, and January 13, 2003.

Four days of discharge X \$10,000 per day = \$40,000

Total Potential Civil Liability: \$40,000

A significant volume of turbid storm water runoff was discharged from the Site into state waters. However, the discharge volume associated with these violations has not been determined. The calculation of a discharge volume would increase the maximum liability.

9. In determining the amount of any civil liability, pursuant to California Water Code, Section 13385(e), the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violation; and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. The Regional Water Board is also required to consider the requirement in this section that states that, 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.
 - a) Nature, circumstances, extent and gravity of the violation: Vintage Greens LLC's erosion and sediment control efforts were inadequate to prevent the continued discharge of sediment laden storm water runoff. Maintenance of graded areas damaged by the storm events of November through early January was virtually non-existent. During this period, Regional Water Board staff continually notified on-site personnel of the need to improve and/or install basic erosion and sediment control practices. Water quality impacts to Windsor Creek were severe, ongoing, and virtually unabated due to a lack of erosion and sediment controls on those areas on-site graded but not built on. The nature, circumstances, extent, and gravity of the violation do not provide justification for reducing the amount of civil liability.
 - b) Violator's ability to pay: Staff has no information to indicate that the violator would be unable to pay any imposed administrative civil liability. The violator's ability to pay does not provide justification for reducing the amount of civil liability.
 - c) Prior history of violations: On February 21, 2002, the Regional Water Board issued an ACL complaint, No. R1-2002-0027 for \$3,000, for sediment laden discharges related to Vintage Greens LLC's Windsor Soccer Park construction project, which Vintage Greens LLC paid the ACL in full. The prior history of violations does not provide justification for reducing the amount of civil liability.
 - d) Degree of culpability: Vintage Greens LLC is the construction storm water permit holder and developer of the project and, as such, it is responsible for permit compliance. Vintage Greens LLC were aware of Regional Water Board concerns, and yet failed to install and maintain erosion and sediment controls, including the extensive use of groundcover, on areas on-site that had been graded but not yet built upon. The degree of culpability does not provide justification for reducing the amount of civil liability.
 - e) Economic benefit: There was economic benefit derived from avoiding the installation and maintenance of adequate erosion and sediment controls until mid-January. Staff estimate the amount of savings realized was between \$5,000 and \$10,000.

- f) Other matters that justice may require: Staff costs associated with this enforcement action are estimated to be \$7,000.
10. The issuance of this complaint does not have the potential to result in a physical change in the environment and is therefore not a “project” subject to the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.). It is also an enforcement action to protect the environment, and is therefore exempt from CEQA pursuant to Title 14, California Code of Regulations, Sections 15308 and 15321(a)(2).
11. Based on a review of the facts and the required factors, the Executive Officer of the Regional Water Board is issuing this Complaint with a proposed administrative civil liability in the amount of forty thousand dollars (\$40,000.00). This amount is due and payable within 30 days of the date of this Complaint.

Waiver of Hearing

12. You may waive the right to a future hearing. If you wish to waive the hearing, please check and sign the waiver and return it together with a cashier’s check or money order, made payable to the “State Water Resources Control Board” for \$40,000.00 within 15 days of receipt of this complaint to the California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, CA 95403. This settlement will not become effective until after a 30-day public comment period.

Ordered by _____

Catherine E. Kuhlman
Executive Officer

February 11, 2004