

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2004-0539

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

MR. NICK PETSAS
LAKE BERRYESSA ENTERPRISES, INC. II
dba PUTAH CREEK RESORT

NAPA COUNTY

This Administrative Civil Liability Complaint (hereafter Complaint) is issued to Mr. Nick Petsas and Lake Berryessa Enterprises, Inc. II, dba Putah Creek Resort, (hereafter known as “Discharger”) based on a finding of failure to submit technical reports pursuant to California Water Code (CWC) Section 13267, and based on provisions of CWC Section 13267(b)(1) and Sections 13268(a) and (b), which authorize the imposition of an Administrative Civil Liability.

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

1. The Discharger owns and operates a concession known as the Putah Creek Resort at 7600 Knoxville Road in Napa County. The resort consists of approximately 150 mobile homes, a 27 unit motel, 80 campsites, a store, a restaurant, a boat launch, and dock facilities.
2. The Discharger operates the water supply and wastewater collection, treatment, and disposal systems. The wastewater system consists of three percolation/oxidation ponds that are located in an area near the East 1/4 corner of Section 16, T9N, R4W, MDB&M.
3. Waste Discharge Requirements (WDRs) Order No. 5-00-020, adopted by the Regional Board on 28 January 2000, prescribes requirements for the treatment, storage and disposal of domestic wastewater at the facility.

PREVIOUS ENFORCEMENT

4. The Discharger has had a long history of violations of its WDRs. These violations include lack of submittal of self-monitoring reports and technical reports, wastewater discharges and overflows to Lake Berryessa and surface water drainage courses, and failure to implement system upgrades and measures to ensure compliance with the WDRs.
5. On 13 July 1998, the Executive Officer issued Administrative Liability Complaint (ALCL) No. 98-505 for several wastewater overflows to surface waters and for failure to submit technical and monitoring reports required by Section 13267 of the CWC. The overflows to surface waters were associated with the collection, treatment and disposal system and occurred during the months of January, February, April, May, and June 1998. As a result of the ALCL, the

Discharger paid \$10,500 to the State Water Resources Control Board Cleanup and Abatement Account.

6. On 24 December 1998, the Executive Officer issued Cleanup and Abatement Order (CAO) No. 98-736 to address the issues identified in the 13 July 1998 ACLC, as well as the integrity of the berm between Pond Nos. 1, 2, and 3, the headworks (pump house and septic tanks), and the exposed collection pipeline as identified in a 3 December 1998 inspection.
7. The CAO required a series of technical reports leading to the submittal of a Report of Waste Discharge (RWD). Based on that RWD, the Regional Board adopted updated WDRs in January 2000. The WDRs state that the Discharger plans to build a fourth wastewater pond to provide an additional 570,000 gallons of treatment and storage capacity, and that the WDR flow limit is based on this additional pond. However, the Discharger never constructed the fourth pond.
8. On 6 June 2002, the Regional Board adopted ACL Order No. R5-2002-0087 for discharges of wastewater to a surface water drainage course. The discharges to surface waters violated Discharge Prohibition Nos. A.1 and A.2, and Discharge Specifications Nos. B.1 and B.3 of the WDRs Order No. 5-00-020. The Discharger paid \$23,500 to the State Water Resources Control Board Cleanup and Abatement Account.

RECENT VIOLATIONS

9. On 4 February 2004, staff issued a Notice of Violation (NOV) for the non-submittal of groundwater monitoring reports as required by Monitoring and Reporting Program (MRP) No. 5-00-020. The MRP requires the Discharger to develop a system of at least four groundwater monitoring wells to define groundwater impacts from the percolation/oxidation ponds. The NOV required the Discharger to submit a Groundwater Monitoring Workplan by 1 June 2004 and a Well Installation Report by 1 August 2004.
10. On 11 March 2004, staff performed an inspection of the facility and made the following observations: (a) freeboard was between 1.5 and 2 feet in each of the three wastewater ponds, (b) wastewater seepage was observed from the northeast berm of Pond No. 1, and (c) severe erosion was evident along the north embankment of Pond No. 1, and was covered by plastic sheeting.
11. On 12 March 2004, staff issued a NOV for the violation of Discharge Specification Nos. B.3, B.11, and B.15 of the WDRs. The NOV required the Discharger to: (a) perform daily pond freeboard measurements and inspect each of the pond berms for the presence of seepage, (b) submit a Contingency Plan describing steps taken if wastewater encroaches to within two feet of freeboard in any pond, (c) submit a Short-Term Berm Improvement Report describing measures that have been taken to prevent catastrophic failure, as well as seepage and erosion, in the berm surrounding Pond No. 1, and (d), submit a Long-Term Berm Improvement Workplan permanent

repairs to the berm surrounding Pond No. 1, and the berms surrounding Pond Nos. 2 and 3 if necessary.

12. On 22 March 2004, the Discharger began submitting the weekly pond inspection reports, and on 23 March 2004, staff received the Contingency Plan. The Plan stated that the Discharger would implement the hauling of wastewater only in the event that the freeboard in the ponds decreased to one-foot (note that this plan does not comply with WDRs, as two feet of freeboard is required). The Plan also stated that the berm conditions appear to be same as when they were repaired in the fall of 1999 as required by CAO No. 98-736, and that a further evaluation would be completed by 16 April 2004.
13. On 16 April 2004, staff received the Short-Term Berm Improvement Plan, which provided a brief summary of actions implemented by the Discharger, including (a) a discussion of slope design with a consultant familiar with the facility's berms, (b) a site visit with the contractor to discuss potential corrective actions, (c) reinstallation of the black sheeting covering the Pond No. 1 embankment, and (d) excavation of the seepage area below Pond No. 1 and the installation of a mortar dam and perforated drain pipe connecting to the overflow piping from Pond No. 1 to Pond No. 2.
14. On 16 May 2004, staff received the Long-Term Berm Improvement Workplan which provided a schedule of tasks which included: (a) the installation of borings in the berms by 1 August, (b) the installation of a bentonite seal around the pipe within the Pond No. 1 berm by 1 August, (c) the evaluation of boring results in regards to berm stability and installation of monitoring wells by 1 September, (d) the installation of vegetative protection mats on the berm of Pond No. 1 by 1 October, and (e), the on-going monitoring the growth of the vegetative mats.
15. On 1 June 2004, staff received a draft Groundwater Monitoring Well Installation Workplan. The document, however, did not actually propose the installation of groundwater monitoring wells, but instead stated that locations of the wells had not been determined because of the substantial amount of bedrock underlying Pond Nos. 1 and 2 and the lack of a groundwater table.
16. On 13 July 2004, staff met with the Discharger to discuss a number of issues. Staff again stated that the Discharger must monitor the groundwater to determine compliance with the Groundwater Limitation of its WDRs. The Discharger indicated that the geologic information obtained during the soil boring investigation would be used to help determine the locations of the groundwater monitoring wells. Staff also stated that the Discharger must submit a formal water balance to determine whether the three ponds provide enough capacity, and if not, then Pond No. 4 must be constructed.
17. On 30 July 2004, the Executive Officer issued a CWC 13267 Order requiring that the Discharger submit the following reports by the following dates: (a) a technical report describing the installation of the vegetative mats on Pond No. 1 berm by 1 September 2004, (b) a water balance

that demonstrates whether or not the facility contains adequate storage and disposal capacity to ensure full compliance with the WDRs by 1 September 2004, (c) written documentation that the bentonite seal around the overflow piping in the berm at Pond No. 1 was installed by 1 September 2004, (d) a technical report discussing results of at least four soil borings drilled within/around the Pond No. 1 berm by 30 September 2004, (e) a report describing measures taken to repair the low area in the berm of Pond No. 2 by 15 October 2004, (f) a revised Groundwater Monitoring Well Installation Workplan by 15 October 2004, and (g) if the water balance showed inadequate capacity, then by 15 October 2004, plans and a timeline for increasing the capacity.

18. On 26 August 2004, staff conducted an inspection of the facility and observed the drilling of four soil borings. Staff also noted that a portion of the irrigation piping along the berm between Pond Nos. 1 and 2 was in place, however the vegetative matting had not been installed.
19. On 10 September 2004, staff sent the Discharger an inspection report. The inspection report also reminded the Discharger that staff had not yet received the three technical reports that were due by 1 September 2004 (as described in Finding No. 17).
20. On 13 September 2004, the Discharger submitted a request to extend the due date for the installation of the vegetative mats on Pond No. 1 berm, and the installation of the bentonite seal around the overflow piping in the berm at Pond No. 1. Staff verbally told the Discharger's consultant that an extension was not warranted. The Discharger submitted the required water balance; however staff determined it to be incomplete. On 18 October 2004, staff informed the Discharger's consultant that the water balance was incomplete and needed to be resubmitted as soon as possible.
21. In violation of the CWC 13267 Order, the Discharger has failed to submit the following reports: (a) the report describing the installation of the vegetative mats on Pond No. 1 berm, (b) written documentation that the bentonite seal around the overflow piping in the berm at Pond No. 1 was installed, (c) the report discussing results of the soil borings drilled within/around the Pond No. 1 berm, (d) the report describing measures taken to repair the low area in the berm of Pond No. 2, and (e) the Revised Groundwater Monitoring Well Installation Workplan. These reports are necessary to ensure that the wastewater ponds do not overflow and that the waste is disposed in accordance with WDRs Order No. 5-00-020.

REGULATORY CONSIDERATIONS

22. By the acts and omissions cited above, the Discharger has violated the Executive Officer's CWC Section 13267 Order. CWC Section 13267 (b)(1) reads, in part, as follows: "...the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to

discharge waste outside of its region that could affect the quality of waters within its region, shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires....”

23. CWC Section 13268 (a) states: “Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).”
24. CWC Section 13268(b)(1) states: “Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.”
25. CWC Section 13327 states: “In determining the amount of civil liability, the regional board ... shall take into consideration the nature, circumstance, 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 ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.”
26. CWC Section 13268(b)(1) authorizes Administrative Civil Liability not exceeding one thousand dollars (\$1,000) for each day of failure to submit technical reports as required by subdivision (b) of Section 13267. As of 22 October 2004, the Discharger has failed to submit the following:
 - a. The technical report describing the installation of the vegetative mats on Pond No. 1 berm (due on 1 September 2004);
 - b. Written documentation that the bentonite seal around the overflow piping in the berm at Pond No. 1 was installed (due on 1 September 2004);
 - c. The technical report discussing results of at least four soil borings drilled within/around the Pond No. 1 berm (due on 30 September 2004);
 - d. The report describing measures taken to repair the low area in the berm of Pond No. 2 (due on 15 October 2004); and
 - e. The revised Groundwater Monitoring Well Installation Workplan (due on 15 October 2004).
27. Based on the 30 July 2004 CWC 13267 Order, as of 22 October 2004:
 - a. The technical report describing the installation of the vegetative mats on Pond No. 1 berm is 52 days late;
 - b. The written documentation that the bentonite seal around the overflow piping in the berm at Pond No. 1 is 52 days late;
 - c. The technical report discussing the results of soil borings drilled within/around the Pond No. 1 berm is 22 days late;

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- d. The report describing measures taken to repair the low area in the berm of Pond No. 2 is 7 days late; and
 - e. The Revised Groundwater Monitoring Well Installation Workplan is 7 days late.
28. The maximum liability for the nonsubmittal of these technical reports is one hundred forty thousand dollars (\$140,000). No minimum liability is required to be imposed under Section 13268(b)(1).
29. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321 (a)(2), Title 14, of the California Code of Regulations.

MR. NICK PETSAS AND LAKE BERRYESSA ENTERPRISES, INC. II, dba PUTAH CREEK RESORT, ARE HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed Administrative Civil Liability in the amount of fifteen thousand dollars (\$15,000). The amount of the liability proposed is based upon a review of the factors set forth in CWC Section 13327 cited in Finding No. 25 above, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing shall be held on **2/3 December 2004** unless the Discharger agrees to waive the hearing and pay the imposed civil liability in full.
3. If a hearing is held, the Regional 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.
4. In lieu of a hearing, the Discharger may waive the right to a hearing. If you wish to waive the hearing, please sign the enclosed waiver and return it with the full amount of civil liability (in a check made payable to the *State Water Resources Control Board*), to the Regional Board's office at 11020 Sun Center Drive, Rancho Cordova, Sacramento, CA 95670, by 11 November 2004.

THOMAS R. PINKOS, Executive Officer

(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 Mr. Nick Petsas and Lake Berryessa Enterprises, Inc. II, dba Putah Creek Resort, (hereinafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2004-0539 (hereinafter the “Complaint”);
2. I am informed of the right provided by 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. Without admitting liability for the matters alleged in the Complaint, I otherwise agree to remit payment for the civil liability imposed in the amount of fifteen thousand dollars (\$15,000) by check, which contains a reference to “ACL Complaint No. R5-2004-0539” and is made payable to the “*State Water Resources Control Board Cleanup and Abatement Account.*”
5. I understand the payment of the above amount constitutes a settlement of 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 this settlement during the 30-day public comment period, which began on the date of 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.

(Name)

(Title)

(Date)

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CENTRAL VALLEY REGION

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REGULATORY CONSIDERATIONS

22. By the acts and omissions cited above, the Discharger has violated the Executive Officer's CWC Section 13267 Order. CWC Section 13267 (b)(1) reads, in part, as follows: "...the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to

discharge waste outside of its region that could affect the quality of waters within its region, shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires....”

23. CWC Section 13268 (a) states: “Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).”
24. CWC Section 13268(b)(1) states: “Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.”
25. CWC Section 13327 states: “In determining the amount of civil liability, the regional board ... shall take into consideration the nature, circumstance, 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 ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.”
26. CWC Section 13268(b)(1) authorizes Administrative Civil Liability not exceeding one thousand dollars (\$1,000) for each day of failure to submit technical reports as required by subdivision (b) of Section 13267. As of 22 October 2004, the Discharger has failed to submit the following:
 - a. The technical report describing the installation of the vegetative mats on Pond No. 1 berm (due on 1 September 2004);
 - b. Written documentation that the bentonite seal around the overflow piping in the berm at Pond No. 1 was installed (due on 1 September 2004);
 - c. The technical report discussing results of at least four soil borings drilled within/around the Pond No. 1 berm (due on 30 September 2004);
 - d. The report describing measures taken to repair the low area in the berm of Pond No. 2 (due on 15 October 2004); and
 - e. The revised Groundwater Monitoring Well Installation Workplan (due on 15 October 2004).
27. Based on the 30 July 2004 CWC 13267 Order, as of 22 October 2004:
 - a. The technical report describing the installation of the vegetative mats on Pond No. 1 berm is 52 days late;
 - b. The written documentation that the bentonite seal around the overflow piping in the berm at Pond No. 1 is 52 days late;
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- d. The report describing measures taken to repair the low area in the berm of Pond No. 2 is 7 days late; and
 - e. The Revised Groundwater Monitoring Well Installation Workplan is 7 days late.
28. The maximum liability for the nonsubmittal of these technical reports is one hundred forty thousand dollars (\$140,000). No minimum liability is required to be imposed under Section 13268(b)(1).
29. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321 (a)(2), Title 14, of the California Code of Regulations.

MR. NICK PETSAS AND LAKE BERRYESSA ENTERPRISES, INC. II, dba PUTAH CREEK RESORT, ARE HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed Administrative Civil Liability in the amount of fifteen thousand dollars (\$15,000). The amount of the liability proposed is based upon a review of the factors set forth in CWC Section 13327 cited in Finding No. 25 above, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing shall be held on **2/3 December 2004** unless the Discharger agrees to waive the hearing and pay the imposed civil liability in full.
3. If a hearing is held, the Regional 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.
4. In lieu of a hearing, the Discharger may waive the right to a hearing. If you wish to waive the hearing, please sign the enclosed waiver and return it with the full amount of civil liability (in a check made payable to the *State Water Resources Control Board*), to the Regional Board's office at 11020 Sun Center Drive, Rancho Cordova, Sacramento, CA 95670, by 11 November 2004.

THOMAS R. PINKOS, Executive Officer

(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 Mr. Nick Petsas and Lake Berryessa Enterprises, Inc. II, dba Putah Creek Resort, (hereinafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2004-0539 (hereinafter the “Complaint”);
2. I am informed of the right provided by 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. Without admitting liability for the matters alleged in the Complaint, I otherwise agree to remit payment for the civil liability imposed in the amount of fifteen thousand dollars (\$15,000) by check, which contains a reference to “ACL Complaint No. R5-2004-0539” and is made payable to the “*State Water Resources Control Board Cleanup and Abatement Account.*”
5. I understand the payment of the above amount constitutes a settlement of 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 this settlement during the 30-day public comment period, which began on the date of 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.

(Name)

(Title)

(Date)