

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2009-0500

IN THE MATTER OF

PETER G GIAMPAOLI
EPICK HOMES – BELLA VISTA 6, LP
EPICK HOMES, LP
LASSEN VISTA SUBDIVISION
SHASTA COUNTY

This Order is issued to Peter G Giampaoli, Epick Homes - Bella Vista 6, LP, and Epick Homes, LP (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL). This Order is based on findings that the Discharger violated provisions of the federal Clean Water Act (CWA), the CWC, and the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity No. CAS000002, Order No. 99-08-DWQ (General Permit).

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds the following:

1. On 15 September 2005, Bella Vista, LP, as the purported owner of the Lassen Vista Subdivision, submitted a Notice of Intent (NOI) to obtain coverage under the General Permit, which was signed by Pete G. Giampaoli. Lassen Vista Subdivision is a 10.2 acre subdivision construction project in Redding, Shasta County (APN 073-170-026)(hereafter referred to as "the Site"). However, Bella Vista, LP does not appear to have any connection to the Site; Epick Homes – Bella Vista 6, LP is the owner of the Site, as reflected in the recording documents on file with Shasta County. It appears that naming Bella Vista, LP in the NOI was an inadvertent oversight by Peter G Giampaoli, due to the fact that Bella Vista, LP and Epick Homes – Bella Vista 6, LP are similarly named. Epick Homes, LP is correctly listed on the NOI as the developer of the Site. The Site is being developed into a 22-lot subdivision.
2. Runoff from the Site discharges to an unnamed tributary to the West Fork Stillwater Creek and the Sacramento River, a water of the US.
3. On 19 August 1999, the State Water Resources Control Board issued NPDES General Permit CAS000002, Order 99-08-DWQ, which implemented Waste Discharge Requirements (WDRs) for storm water discharges associated with construction activity.
4. The General Permit requires that dischargers who discharge storm water associated with construction activity (including clearing, grading, and excavation activities) to surface waters file an NOI to obtain coverage under the General Permit, and implement Best Available Technology Economically Achievable and Best Conventional Control Technology to reduce storm water pollution to the maximum extent practicable. The

Discharger submitted an NOI for coverage under the General Permit on 15 September 2005 and received confirmation in WDID 5R45C337787 on 15 November 2005.

5. On 3 January 2008, Central Valley Water Board staff inspected the Site and found a failure to provide an effective combination of erosion and sediment control, and a failure to install, implement, and maintain storm water construction Best Management Practices (BMPs), which resulted in the discharge of sediment-laden storm water to surface waters. On 7 February 2008, staff conducted a follow-up inspection and determined that the Discharger had failed to make improvements in the erosion and sediment control BMPs, which likely resulted in further discharges. The violations of the General Permit observed by staff included:
 - a. Failure to implement an effective combination of erosion and sediment control Best Management Practices (Section A: Storm Water Pollution Prevention Plan (SWPPP), No. 6-Erosion Control and No. 8 – Sediment Control).
 - b. Failure to maintain, inspect and repair Best Management Practices (BMPs) (Section A: SWPPP, No. 11-Maintenance, Inspection and Repair).
 - c. Failure to train contractors and/or employees regarding inspections and maintenance of BMPs (Section A: SWPPP, No. 12-Training).
 - d. Failure to maintain control measures identified in the SWPPP (Section A: SWPPP, No 1-Objectives).
 - e. Discharging storm water causing or threatening to cause pollution, contamination, or nuisance (Discharge Prohibition A.3).
 - f. Failure to implement the SWPPP developed for the construction activity, 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 Quality Control Board's Basin Plan (Receiving Water Limitation B.2).
 - g. Lack of implementation of controls to reduce pollutants in storm water discharges from their construction sites to the Best Available Technology/Best Conventional Pollutant Control Technology) performance standard (Special Provision C.2).
6. On **26 February 2008** Regional Water Board staff issued a Notice of Violation to the Discharger for failing to provide an effective combination of erosion and sediment controls, for discharging sediment-laden storm water to surface waters, and for the continuing threat of a discharge of sediment to waters of the state.

7. CWC section 13323 states, in relevant part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

8. CWC section 13385 states, in relevant 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 or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

...

(5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water 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 sum of both of the following:

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

(2) Where there is a 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.

(d) For purposes of subdivisions (b) and (c), "discharge" includes any discharge to navigable waters of the United States, any introduction of pollutants into a publicly owned treatment works, or any use or disposal of sewage sludge.

(e) In determining the amount of any 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 benefit 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.

9. **Maximum Civil Liability.** Per CWC section 13385(c), the maximum administrative civil liability in this case may be assessed at \$10,000 per violation per day. Thirty-four days elapsed between the 3 January 2008 inspection and the 7 February 2008 follow-up inspection. The follow-up inspection revealed that many of the violations noted in the 3 January 2008 inspection had not been corrected. Although the Central Valley Water Board may count each discreet violation of the General Stormwater Permit as a separate violation, and may therefore multiply the number of violations by the number of days, for the purposes of this Order it is reasonable to calculate the maximum penalty as one violation for each day that elapsed between the two inspections. No runoff calculation was performed that would lead to a per-gallon assessment under CWC section 13385(c)(2). Therefore, the maximum civil liability is three hundred and forty thousand dollars. (\$340,000 = \$10,000 per day × 34 days).
10. **Minimum Civil Liability.** CWC section 13385(e) provides that, at a minimum, civil liability shall be assessed at a level that recovers the economic benefit or savings, if any, derived from the acts that constitute the violations. The Discharger should have redirected laborers to repair and maintain the storm water BMPs, and should have invested more time training contractors and/or employees. The Central Valley Water Board does not have an accurate calculation as to the economic benefit that inhaled to the Discharger, but estimates that the proposed fine exceeds the economic benefit or savings from the violations.
11. **Water Code Section 13385(e) Factors:**

Factor	Consideration
Nature, Circumstances, Extent, and Gravity of the Violations	Complying with the SWPPP, educating subcontractors, and maintaining BMPs could have prevented the discharge of waste.
Degree of Culpability	The Discharger is responsible for compliance with the General Permit and its own SWPPP.
Voluntary Cleanup Efforts	The Discharger failed to take immediate action to implement an effective combination of BMPs after notification by staff.
Susceptibility to Cleanup or Abatement	Cleanup and abatement occurred only after issuance of the NOV.
Degree of Toxicity of the Discharge	Discharge of sediment to surface waters is detrimental to aquatic species.
Prior History of Violations	Discharger had a previous violations a year earlier, on 2 February 2007, for similar issues.
Economic Benefit or Savings Resulting from the Violation	Substantial. Not redirecting workers to implement effective storm water BMPs resulted in substantial savings.

Factor	Consideration
Ability to Pay	The Discharger has not submitted evidence of inability to pay the penalty or ability to continue in business.
Other Matters that Justice May Require	Staff costs for responding to violation are \$4800.

11. Issuance of this Administrative Civil Liability Order to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).
12. On 15 March 2007, the Central Valley Water Board explicitly delegated to the Executive Officer the authority to issue orders to assess administrative civil liability where the matter is not contested by the discharger. (Resolution R5-2007-0009).
13. Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

IT IS HEREBY ORDERED pursuant to California Water Code section 13385 and Resolution R5-2007-0009, that:

1. The Pete Giampaoli, Epick Homes-Bella Vista 6 LP, And Epick Homes, LP shall be assessed an Administrative Civil Liability in the amount of **ten thousand dollars (\$10,000)**.
2. The Administrative Civil Liability shall be paid as followed
 - a. Five thousand dollars (\$5,000) shall be submitted by **1 April 2009**.
 - b. Two thousand five hundred dollars (\$2,500) shall be submitted by **1 August 2009**
 - c. Two thousand five hundred dollars (\$2,500) shall be submitted by **1 March 2010**

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PETE GIAMPAOLI
EPICK HOMES/BELLA VISTA LLP
LASSEN VISTA SUBDIVISION
SHASTA COUNTY

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This Order constitutes a settlement of the violations herein mentioned. Notice of this settlement was published on the Central Valley Water Board's website and was provided to all interested parties on 30 January 2009 and the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) has expired. This Order is effective immediately upon issuance.

PAMELA C. CREEDON, Executive Officer

4 March 2009
(Date)

GDD/AJJ: sae