

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2017-0549

MANDATORY PENALTY
IN THE MATTER OF

ORIGINAL SIXTEEN TO ONE MINE, INC.
SIXTEEN TO ONE MINE
SIERRA COUNTY

This Administrative Civil Liability Complaint (Complaint) is issued to Original Sixteen to One Mine, Inc. (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability, Water Code section 13323, which authorizes the Executive Officer to issue this Complaint, and Water Code section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on allegations that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2015-0002 (NPDES CA0081809).

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

1. The Discharger owns and operates the Sixteen to One Mine (Facility), an underground hard rock gold mine. The Facility discharges mine drainage via the 21 Tunnel Portal to Kanaka Creek, tributary to Middle Yuba River, Yuba River, Feather River, and Sacramento River, a water of the United States in the Sacramento Hydrologic Basin.
2. Discharges from the Facility were regulated by the Central Valley Water Board under Waste Discharge Requirements (WDRs) Order R5-2002-0043, which was adopted on 1 March 2002 and amended on 30 April 2003.
3. On 5 February 2015, the Board adopted WDRs Order R5-2015-0002 (NPDES CA0081809), which contained new requirements and superseded Order R5-2002-0043 except for enforcement purposes. WDRs Order R5-2015-0002 became effective on 16 April 2015. A minor modification letter was issued on 10 September 2015 to correct an error in the monitoring report due dates.
4. On 17 April 2015, the Board issued Time Schedule Order (TSO) R5-2015-0035 pursuant to Water Code section 13300. When the discharge complies with the interim effluent limits in the TSO for electrical conductivity, arsenic, antimony, cadmium, copper, iron, lead, manganese, and nickel, then the Discharger is protected from mandatory minimum penalties (MMPs) for these constituents. However, if the discharge exceeds the interim limits, then protection is lost and the Discharger is subject to MMPs. The interim limits are in effect until 16 April 2020. The Complaint considers the protection from MMPs provided by the TSO.

PREVIOUS ENFORCEMENT ACTIONS

5. Between February 2006 and January 2007, the Discharger did not submit twelve monitoring reports as required by WDRs R5-2002-0043. Failure to submit these monitoring reports resulted in 78 serious violations of Water Code sections 13385 and 13385.1. The Central Valley Water Board referred these violations to the Attorney General whom ultimately filed a lawsuit against the Discharger.

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6. On 11 February 2015, a Stipulated Final Judgment was entered into by and between the State of California, ex. rel. California Regional Water Quality Control Board, Central Valley Region, and Original Sixteen to One Mine, Inc. (Case No. 7019) to resolve the outstanding violations. The settlement required the Discharger to pay \$237,083 in monthly installments. The Discharger is currently paying the monthly installments and has made each payment on time and in accordance with the agreed upon payment schedule. Additionally, the Discharger agreed to file a Report of Waste Discharge and obtain a NPDES permit, pursuant to Water Code sections 13263 and 13377 covering discharges to Kanaka Creek from Sixteen to One Mine and agreed to fully comply with each and every term of the NPDES permit.
7. On 29 April 2016, the Central Valley Water Board adopted Administrative Civil Liability (ACL) Order R5-2016-0021. The ACL Order charged the Discharger with civil liability in the amount of \$6,000 which represented the sum of the statutory MMPs for effluent limitation violations that occurred at the Facility from 16 April 2015 through 30 September 2015. The Discharger was invoiced on 28 April 2016 and was to pay the \$6,000 civil liability in full by 28 May 2016. As of the date of this Complaint, the Discharger has paid \$1,000 of the civil liability; therefore, a \$5,000 balance is currently outstanding.

CURRENT ENFORCEMENT ACTION

8. This Complaint addresses administrative civil liability for effluent violations that occurred during the period from 1 October 2015 through 31 December 2016. These violations are specifically identified in Attachment A to this Complaint as subject to MMPs. Attachment A to this Complaint is attached hereto and incorporated herein by this reference.
9. On 2 February 2017, Central Valley Water Board staff issued a draft Record of Violations (ROV) to the Discharger for the period from 1 October 2016 through 30 September 2016. The Discharger responded on 1 March 2017 by phone and requested a meeting to discuss the ROV. Board staff met with the Discharger on 27 March 2017 and discussed the effluent violations and MMPs associated with the violations. The Discharger did not provide any information to show that the laboratory results were in error or that the violations should otherwise be dismissed; therefore, MMPs must be assessed. This Complaint extends the period through 31 December 2016; two copper violations subject to MMPs were identified in addition to those cited in the ROV.
10. Water Code section 13385 subdivision (h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code section 13385, subdivision (h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

Water Code section 13385, subdivision (h)(2) states:

For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in

Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

Water Code section 13385 subdivision (i)(1) states, in part:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

11. Water Code section 13323 states, in 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.

12. Water Code section 13385, subdivision (j) exempts certain violations from the mandatory minimum penalties, and states, in relevant part:

Subdivisions (h) and (i) do not apply to any of the following:

- 3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308 if all of the following requirements are met:
 - C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible....For the purposes of this subdivision, the time schedule may not exceed five years in length The interim requirements shall include both of the following:
 - i) Effluent limitations for the pollutant or pollutants of concern.
 - ii) Actions and milestones leading to compliance with the effluent limitation.

13. WDRs Order R5-2015-0002 Effluent Limitations IV.A.1.a., includes, in part, the following effluent limitations:

- a. The Discharger shall maintain compliance with the final effluent limitations...:

Table 4. Effluent Limitation

Parameter	Units	Effluent Limitation	
		Average Monthly	Maximum Daily
Total Suspended Solids	mg/L	20	30
Antimony	µg/L	6.0	12
Arsenic	µg/L	10	20
Cadmium	µg/L	0.85	1.7
Copper	µg/L	3.1	6.3
Nickel	µg/L	21	43

14. WDRs Order R5-2015-0002, Effluent Limitations IV. A.1.e. include, in part, the following effluent limitations:

- e. Iron, Total Recoverable. For a calendar year, the annual average effluent concentration shall not exceed 300 µg/L.

15. TSO R5-2015-0035, Order section 2, states in part:

The following interim effluent limitations shall be effective **immediately and until 16 April 2020...**

Parameter	Units	Interim Effluent Limitation	
		Interim Average Monthly Effluent Limitation	Interim Maximum Daily Effluent Limitation
Arsenic	µg/L	700	1000
Antimony	µg/L	35	50
Cadmium	µg/L	30	50
Copper	µg/L	10	15
Iron	µg/L	2100	2500
Nickel	µg/L	150	200

16. TSO R5-2015-0035 contains interim effluent limitations for arsenic, antimony, cadmium, copper, iron, and nickel; however, as shown in Attachment A, the Discharger exceeded the interim effluent limit and therefore Water Code section 13385, subdivision (j), does not exempt those particular violations from MMPs.
17. According to the Discharger's self-monitoring reports, the Discharger committed two (2) serious Group I violations, nine (9) serious Group II violations, and one (1) non-serious violation. The one (1) non-serious violation is not subject to MMPs, as shown in Attachment A. Violations are defined as serious and are subject to MMPs under WDRs Order R5-2015-0002 because the measured concentration of Group I constituents exceeded maximum prescribed levels by 40 percent or more and Group II constituents exceeded maximum prescribed levels by 20 percent or more. The mandatory minimum penalty for these violations is **thirty three thousand dollars (\$33,000)**. As stated herein, a detailed list of the cited effluent violations is included in Attachment A. This Complaint addresses administrative civil liability only for violations that are specifically identified in Attachment A as subject to mandatory minimum penalties.

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18. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's WDRs and/or TSO for which penalties have not yet been assessed or for violations that may subsequently occur.
19. On 21 December 2015, the Executive Officer designated Andrew Altevogt, Assistant Executive Officer, as the Lead Prosecution Officer for all enforcement matters originating in the Central Valley Region. The 21 December 2015 Delegation of Authority also authorizes Andrew Altevogt to issue Administrative Civil Liability Complaints.
20. Issuance of this Administrative Civil Liability Complaint to enforce Water Code 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).

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ORIGINAL SIXTEEN TO ONE MINE, INC. IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **thirty three thousand dollars (\$33,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **7/8 December 2017**, unless the Discharger does one of the following by **5 October 2017**.
 - a) Waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board. In addition, submits payment for the proposed civil liability of **thirty three thousand dollars (\$33,000)** to the State Water Board with a copy of the check to the Central Valley Water Board; or
 - b) Requests to engage in settlement discussions by checking the box next to Option 2 on the attached form, and returning it to the Board along with a letter describing the issues to be discussed. The Central Valley Water Board must agree to the postponement; or
 - c) Requests to delay the hearing by checking off the box next to Option 3 on the attached form, and returning it to the Board along with a letter describing the proposed length of delay and the issues to be discussed. The Central Valley Water Board must agree to the postponement.
3. If a hearing on this matter is held, the Central Valley 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.
4. 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.

Original signed by

ANDREW ALTEVOGT, Assistant Executive Officer

11 September 2017

DATE

Attachment A: Record of Violations

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent Original Sixteen to One Mine, Inc. (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2017-0549 (hereafter 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. The person who has been issued a complaint may waive the right to a hearing."

☐ **(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)**

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **thirty three thousand dollars (\$33,000)** by check that references "ACL Complaint R5-2017-0549" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the State Water Resources Control Board, Accounting Office, Attn: ACL Payment at PO Box 1888, Sacramento, California, 95812-1888 by **5 October 2017**. The waiver and a copy of the check must be submitted to the Central Valley Water Board at 11020 Sun Center Drive #200, Attn: Howard Hold, Rancho Cordova, California, 95670 by **5 October 2017**.
- 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 a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. 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: 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 Central Valley 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 Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. The Discharger must provide a letter describing the issues to be discussed in settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

☐ **(OPTION 3: 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 Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley 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 Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

**ATTACHMENT A TO ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2017-0549
MANDATORY MINIMUM PENALTIES**

**Original Sixteen to One Mine, Inc.
Sixteen to One Mine**

RECORD OF VIOLATIONS (1 October 2015 – 31 December 2016) MANDATORY MINIMUM PENALTIES
(Data reported under Monitoring and Reporting Program R5-2015-0002 and TSO R5-2015-0035)

	<u>Date</u>	<u>Parameter</u>	<u>Units</u>	<u>WDRs Limit</u>	<u>TSO Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
*	30-Apr-15	Antimony	µg/L	6	35	62.3	Monthly Average	2	998936
1	17-Dec-15	TSS	mg/L	30	NA	41	Daily Maximum	3	1003210
2	31-Dec-15	Arsenic	µg/L	10	700	883	Monthly Average	2	1008352
3	31-Dec-15	Antimony	µg/L	6	35	41.1	Monthly Average	2	1008346
4	31-Dec-15	TSS	mg/L	20	NA	41	Monthly Average	1	1003251
5	31-Dec-15	Cadmium	µg/L	0.85	30	30.2	Monthly Average	2	1008347
6	31-Dec-15	Iron	µg/L	300	†	486	Annual Average	1	1008349
7	31-Jul-16	Antimony	µg/L	6	35	49.3	Monthly Average	2	1016605
8	29-Sep-16	Antimony	µg/L	12	50	60	Daily Maximum	2	1016612
9	30-Sep-16	Antimony	µg/L	6	35	60	Monthly Average	2	1016606
10	30-Sep-16	Nickel	µg/L	21	150	153	Monthly Average	2	1016611
11	13-Dec-16	Copper	µg/L	6.3	15	115.9	Daily Maximum	2	1021050
12	31-Dec-16	Copper	µg/L	3.1	10	115.9	Monthly Average	2	1021051

* Supporting violations addressed in ACLO R5-2016-0021.

† Time Schedule Order (TSO) R5-2015-0035 contains interim iron limitations based on a maximum daily effluent limit (2500 µg/L) and an average monthly effluent limit (2100 µg/L) averaging period. Protection from MMPs was lost for iron because the effluent concentration exceeded both of the TSO's effluent limitations in December 2015 with a sample concentration of 3,050 µg/L. Two additional iron samples were collected during 2015, which were non-detect (ND) and 486 µg/L. Since a ND value exists in the data set, the annual average is calculated by taking the median value of the three results, which is 486 µg/L.

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violation falls within the first three violations in a 180-day period, thus is not subject to mandatory minimum penalties. Penalties that may be assessed for this violation are discretionary. This violation is not addressed or resolved in this ROV.
4. Non-serious violation subject to mandatory minimum penalties.

<u>VIOLATIONS AS OF: 12/31/16</u>	
Group I Serious Violations:	2
Group II Serious Violations:	9
Non-Serious Violations Not Subject to MMPs:	1
Non-Serious Violations Subject to MMPs:	0
Total Violations Subject to MMPs:	11

**Mandatory Minimum Penalty = (2 Group I Serious Violations) + (9 Group II Serious Violations) x \$3,000
= \$33,000**