

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906**

**ADMINISTRATIVE CIVIL LIABILITY
ORDER NO. R3-2004-0110**

Issued to:

**David Pierson
San Luis Obispo County**

The California Regional Water Quality Control Board, Central Coast Region, finds:

1. David Pierson (hereafter Discharger) owns 635 acres of land in the Creston area of San Luis Obispo County.
2. During the summer of 2002, the Discharger altered approximately 39 of the 635 acres by removing most all of the vegetation, constructing a 1330-foot dirt road, and reestablishing an existing dirt road. The altered 39-acre area will hereafter be referred to as the Site.
3. The Discharger disturbed the Site by removing vegetation without completing soil-disturbing activities by implementing any effective Best Management Practices (BMPs) to prevent soil erosion and the discharge of sediments to waters of the state.
4. The Discharger failed to stabilize the disturbed soils for a period of at least 185 days, from September 1, 2002, when removal of vegetation was completed, until at least March 4, 2003, when Regional Board staff documented that the soils were partially stabilized. It is unknown at what precise time the soils became extensively stable because after March 4, 2003, when soils were still eroding and being discharged to state waters, the next inspection wasn't until September 19, 2003, and at that time the soils were considered extensively stable.
5. The Site drains to an unnamed "blue line" stream that is tributary to Huerhuero Creek, both of which are waters of the state. Huerhuero Creek is tributary to the Salinas River. The

Water Quality Control Plan, Central Coast Region (Basin Plan) designates both recreation and aquatic habitat as beneficial uses of the blue line stream, among other uses and the beneficial uses of Huerhuero Creek to include municipal and domestic water supply, agricultural supply, ground water recharge, water contact recreation, non-contact water recreation, wildlife habitat, warm freshwater habitat, rare, threatened, or endangered species, and commercial and sport fishing.

6. On November 8, 2002, December 20, 2002, and February 3, 2003, Regional Board staff witnessed and documented discharges of eroded soil from the Site to waters of the state.
7. For 185 days the referenced disturbed soils and related discharges constituted violations of Land Disturbance Prohibitions contained in the first two paragraphs of section VIII.E.1 in Chapter 4. Implementation Plan of the Basin Plan.
8. First Prohibition Violated

**VIII.E.1. LAND DISTURBANCE
PROHIBITIONS**

Soil disturbance activities not exempted pursuant to Regional Board Management Principles contained in Chapter Five are prohibited:

3. On soils rated a severe erosion hazard by soil specialists (as recognized by the Executive Officer) where water quality may be adversely impacted;

Unless,

- a. In the case of agriculture, operations comply with a Farm Conservation or Farm Management Plan approved by a Resource Conservation District or the USDA Soil Conservation Service;
- b. In the case of construction and land development, an erosion and sediment control plan or its equivalent (e.g., EIR, local ordinance) prescribes best management practices to minimize erosion during the activity, and the plan is certified or approved, and will be enforced by a local unit of government through persons trained in erosion control techniques; or,
- c. There is no threat to downstream beneficial uses of water, as certified by the Executive Officer of the Regional Board.

The Discharger violated this Prohibition because he disturbed soils rated a severe erosion hazard by soil specialists recognized by the Executive Officer where water quality may be adversely impacted and failed to complete soil disturbing activities by implementing BMPs. The Executive Officer recognizes the Resource Conservation District (RCD) and the United States Department of Agriculture, Soil Conservation Service, presently known as United States Department of Agriculture, Natural Resources Conservation Service (NRCS) as being entities that specialize in evaluating soils and determining if soils are a severe erosion hazard. This recognition is supported by the specific reference to both agencies in the Land Use Disturbance portion in the Basin Plan, Chapter 4. Implementation Plan.

The NRCS co-produced the “Soil Survey of San Luis Obispo County, California – Paso Robles Area” (Soil Survey). In summary the Soil Survey describes the area of the Site as hilly with steep to very steep slopes of 30 – 75 %, and having coarse sandy loam soils of 6 – 12 inches overlying weathered granite rock.

Surface runoff is very rapid, and the hazard of erosion is very high. The Soil Survey also references the soil as being “fragile and any disturbance can cause severe erosion”. Additionally, in August 2001 the RCD performed a study that included the Site (RCD Report). The RCD report not only identified the severe soil erosion hazard at the Site but also noted that runoff of eroded soils from the Site could adversely affect water quality. Regional Board staff visiting the Site also determined there was a severe erosion hazard that could adversely affect water quality. Sediment discharges adversely affect water quality and unreasonably affect beneficial uses by causing excess turbidity, burying riparian vegetation, impairing flow and by covering creek bottoms. Increased turbidity, vegetation destruction and sedimentation can deplete food and habitat availability to zooplankton, insects, freshwater mollusks, and fish.

The three exemption criteria (a., b., and c. in allegation 5.) associated with the prohibition are not applicable because (a.) the Discharger never filed a farm plan with or received approval from the RCD or the NRCS, (b.) the land disturbance was not related to construction or land development and was not subject to an erosion control plan that was enforced by a local government, and (c.) no certification regarding threat to beneficial uses was applied for or issued by the Executive Officer.

Regional Board Management Principles in Chapter Five of the Basin Plan contain exemptions that are referenced in the Land Disturbance Prohibitions. The exemptions are as follows:

- Emergency projects undertaken or approved by a public agency and necessary to prevent or mitigate loss of, or damage to, life, health, property, or essential public services from an unexpected occurrence involving a clear and imminent danger are exempt from this chapter providing such exemption is in the public interest.
- Regulation of sediment discharges from routine annual agricultural operations, such as tilling, grazing, and land grading

and from construction of agricultural buildings is waived except where such activity is causing severe erosion and causing, or threatening to cause, a pollution or nuisance.

- Regulation of discharges from State and federal lands managed by agencies operating in accordance with approved management agency agreements is waived except where such activity is causing, or threatening to cause, a pollution or nuisance.

The Discharger’s soil disturbance activities were not an emergency project, do not qualify as a part of a routine annual agricultural activity, and did not involve State or Federal lands. Therefore the referenced exemptions are not applicable.

The Discharger disturbed severe erosion hazard soils in violation of a Regional Board issued prohibition. The soils remained disturbed for at least 185 days (September 1, 2002 – March 4, 2003) during which time there were occasions when eroded soil sediments from the Site were discharged to waters of the state.

9. Second Prohibition Violated

VIII.E.1. LAND DISTURBANCE PROHIBITIONS

The discharge or threatened discharge of soil, silt, bark, slash, sawdust, or other organic and earthen materials into any stream in the basin in violation of best management practices for timber harvesting, construction, and other soil disturbance activities and in quantities deleterious to fish, wildlife, and other beneficial uses is prohibited.

The Discharger discharged and threatened discharge of soil, silt, and other organic and earthen materials into the blue line stream and Huerhuero Creek in violation of best management practices for soil disturbance activities and in quantities deleterious to fish, wildlife, and other beneficial uses. The Discharger violated this prohibition by removing most all vegetation from the Site that has a severe erosion hazard without implementing effective BMPs to eliminate or minimize erosion and sediment discharges. Regional Board staff in letters and in person had

instructed Discharger as to correct implementation of soil stabilization BMPs and Discharger did not follow that instruction.

10. Pursuant to California Water Code Sections 13350(e)(1), the Regional Board may impose civil liability up to \$5,000 per day for each day each violation occurs. The Discharger violated two Basin Plan prohibitions for a total of at least 185 days each. The maximum liability that may be imposed is \$925,000 (nine hundred twenty-five thousand dollars) per violated prohibition. The total Maximum Liability that can be imposed for violating both prohibitions is \$1,850,000 (one million eight hundred fifty thousand dollars).
11. As required by California Water Code Section 13327, the Regional Board considered:
 - a. nature, circumstances, extent, and gravity of the violations
 - b. discharge susceptibility to cleanup or abatement
 - c. discharge toxicity
 - d. ability to pay and the effect on ability to continue in business
 - e. voluntary cleanup efforts undertaken
 - f. violation history
 - g. degree of culpability
 - h. economic benefit or savings (if any), and
 - i. other matters as justice may require.

Nature, circumstances, extent, and gravity of the violation or violations

In early 2001, the Discharger applied for a subdivision of the 653 acres of land that includes the Site. As part of project review, the Resource Conservation District (RCD) of San Luis Obispo County prepared a report covering the 653 acres, including the Site. The RCD determined the soil was a severe erosion hazard stating, “Surface runoff is very rapid and hazard of water erosion is very high” and describing the soil as being “fragile and any disturbance can cause severe erosion”. The report included best management practices to be included in soil disturbance activities to address the erosion hazards associated with removing vegetation, and the potential for sediments impacting Huerhuero Creek. The RCD report was included in the draft mitigated negative declaration that was issued by the County of San Luis Obispo for the subdivision

project. The Discharger also signed a developer's statement agreeing to implement the best management practices described in the mitigated negative declaration. Despite the RCD determination that the Site was an area of severe erosion hazard, the Discharger removed most all vegetation at the Site during the summer of 2002, without implementing any best management practices to prevent or minimize erosion from occurring and sediments from entering waters of the state. The subdivision was never approved and so the soil disturbance was not a part of that project, but the Discharger knew or should have known that the Site was a severe erosion hazard and that best management practices needed to be implemented.

On September 20, 2002 Regional Board staff inspected the Site and followed up with a letter dated October 10, 2002 addressing best management practices as follows, "applying seed alone is not a sufficient erosion control measure. Established vegetation is a means of erosion control; thus, the seed must be nurtured into vegetation before runoff occurs to be effective erosion control." Thus, Regional Board staff instructed the Discharger on the correct method for implementing the BMP for erosion control by seeding, the BMP the Discharger said he would use at the site.

Continuing into the fall of 2003, staff of the Regional Board repeatedly urged the Discharger to provide effective erosion and sedimentation controls for the Site. Although the Discharger made some efforts to prevent erosion and the discharge of sediments, the Discharger failed to comply with the best management practices prescribed by the RCD and recommended by Regional Board staff.

Sediment discharges occurred periodically throughout the entire rainy season of 2002-2003, and receiving water beneficial uses were adversely impacted by those discharges.

Because the Discharger removed most all vegetation from the 39 acre Site there was a major threat of larger discharges that would have more severely impaired beneficial uses. Larger discharges were likely to have occurred if storms had been more forceful or more frequent.

Because the blue line stream is tributary to Huerhuero Creek and no sediments discharged to the blue line stream were recovered, most all sediments discharged to the blue line stream migrated to Huerhuero Creek. Soil sediments are known to be deleterious to fish, wildlife and other beneficial uses of the blue line stream and Huerhuero Creek.

After describing past damage done to Huerhuero Creek by erosion and other landowners, the RCD Report states,

"Consequently it is critical, at this time, that proper erosion and sediment control be exercised throughout the watersheds draining into Huerhuero Creek to preclude further damage to or elimination of remaining vegetation in the creek. This would include all work done on the applicant's property. Similar measures should be underwritten for other development being proposed in this region of the county."

The sediment discharges adversely affected beneficial uses and threatened discharges were in amounts deleterious to fish, wildlife and other beneficial uses. These violations occurred for the entire rainy season of 2002-2003. Also, because such a large area of high erosion hazard soil was disturbed, there was high threat of large discharges and therefore, a significant amount of liability is justified. However, maximum liability is not justified because the violations were not the most harmful or most extensive violations within the scope of violations covered by Water Code section 13350.

Consideration of this factor justifies assessment of civil liability that is less than maximum.

Whether the discharge is susceptible to cleanup or abatement

Although it is possible that at least some of the discharged sediments could have been cleaned up, it was probably not prudent to do so because doing so can often be more damaging than if the sediments are left in place. Because the discharge is not susceptible to cleanup, a significant liability amount is justified. But because the discharges were not the most harmful or most extensive violations within

the scope of violations covered by Water Code Section 13350 the liability should be less than maximum.

Consideration of this factor justifies assessment of civil liability that is less than maximum.

The degree of toxicity of the discharge

There is no reason to believe that the discharged sediments were toxic.

Consideration of this factor justifies assessment of civil liability that is less than maximum.

With respect to the violator, the ability to pay, the effect on ability to continue in business

The Regional Board has no evidence regarding the Discharger's financial resources or ability to stay in business.

Consideration of this factor does not affect the amount of liability assessed.

Any voluntary cleanup efforts undertaken

The discharger never proposed or initiated any efforts to remove the discharged sediments from waters of the state. However, Regional Board staff would probably have discouraged such efforts as being impractical because efforts to remove the sediments in this case could have been more damaging than if they were left in place. Consideration of this factor justifies assessment of civil liability that is less than maximum.

Any prior history of violations

The Regional Board has no evidence of any prior violations of environmental laws by the Discharger.

Consideration of this factor justifies assessment of civil liability that is less than maximum.

The degree of culpability

The Discharger knew or should have known, from the RCD Report and Draft Negative Declaration, that the Site was a severe erosion hazard and that all discharges of eroded material

would adversely affect beneficial uses in the watershed of Huerhuero Creek. Because the Discharger removed most all vegetation from 39 acres in an area with a severe erosion risk, the Discharger knew, or should have known, these land disturbance activities, that did not include implementing effective best management practices, threatened to discharge quantities of soil and silt in amounts deleterious to fish, wildlife and beneficial uses of the blue line stream and Huerhuero Creek. The Discharger signed an agreement to implement best management practices required in the Mitigated Negative Declaration, but nonetheless removed the vegetation from the Site without implementing any best management practices. After Regional Board staff instructed the Discharger, that to be an effective BMP, seeding must include nurturing seed into vegetation as a means of erosion control, the Discharger failed to implement this best management practice throughout most of the Site for the entire rainy season of 2002-2003. The Discharger failed to implement effective best management practices despite repeated visits, discussions and warnings from Regional Board staff. The Site stabilized and was in substantial compliance after the end of the 2002-2003 rainy season. While knowledge is not required to establish a violation of the Basin Plan Prohibitions, violation with knowledge indicates a higher degree of culpability.

The Discharger's decision to commence soil disturbance without appropriate BMPs, despite ample information, and failure to comply over an entire rainy season despite knowledge of the environmental consequences and opportunities to come into compliance indicates a high level of culpability. Consideration of this factor justifies assessment of maximum liability.

Economic benefit or savings, if any, resulting from the violation

Regional Board staff does not have specific information that would allow staff to determine with any accuracy the actual amount of the savings.

Consideration of this factor justifies assessment of civil liability that is less than maximum.

Other matters that justice may require

The Discharger’s lawyer on October 22, 2004 advised staff in a letter that the Discharger had spent \$82,616.94 on “trying to meet the requirements of your Staff.” Assuming for the purpose of analysis that the Discharger had spent this amount in an attempt to stabilize the 39 acres of disturbed soils and prevent discharges to surface water, those efforts were not successful. These expenditures do not reflect the fact that the Discharger violated the Prohibitions by disturbing the soils, violating BMPs, and failing to prevent discharges to surface waters. The expenditures indicate the discharger spent money but does not justify reducing liability below \$25,500, an amount an amount hundreds of thousands of dollars below maximum.

During the past two years Regional Board staff have spent an extensive amount of time addressing water quality concerns on the Discharger’s property. Using conservative estimates, multiple staff have spent 340 hours on the matter at a cost of \$25, 500 (twenty-five thousand five hundred fifty dollars) (Hourly Rate = \$75).

- 12. On July 16, 2004, after consideration of the above-listed factors, the Executive Officer of the Regional Board issued Complaint No. R3-2004-0110 in the amount of \$25,500 (twenty-five thousand five hundred dollars). The Regional Board has considered the analysis of these factors set forth in the “Proposed Civil Liability” section of the Complaint, and all comments, evidence and testimony received.

- 13. This enforcement action is taken for the protection of the environment and as such is exempt from provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) in accordance with California Code of Regulations, Title 14, Sections 15307 and 15308.
- 14. A hearing on this matter was held before the Regional Board on December 2, 2004, at 895 Aerovista Place, Suite 101, San Luis Obispo, California. The Discharger, or the Discharger’s representative(s), had the opportunity to be heard and to contest the allegations in the Complaint No. R3-2004-0110, which recommended the imposition of civil liability by the Regional Board.
- 15. Following completed testimony on December 2, 2004, the hearing was closed and the Regional Board deliberated. This Administrative Civil Liability Order No. R3-2004-0110 is adopted based upon the evidence and arguments presented at the hearing and relevant evidence in the Regional Board files and upon consideration of the factors mandated by Water Code section 13327.

IT IS HEREBY ORDERED, pursuant to California Water Code Section 13350, David Pierson is assessed a total civil liability of \$25,500 (twenty-five thousand five hundred dollars) to be delivered to the Regional Water Quality Control Board at the letterhead address by January 3, 2005. The check is to be made payable to the State Water Resources Control Board.

I, Roger W. Briggs, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the Regional Water Quality Control Board on December 2, 2004.

 Roger W. Briggs, Executive Officer

 Date