

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

In the matter of:

Greka Oil & Gas, Inc.

2617 Clark Avenue (P.O. Box 5489)

Santa Maria, CA

**First Amended Complaint
No. R3-2008-0063**

Administrative Civil Liability

For

Violations of

**Cleanup and Abatement Order
No. R3-2006-0054 and
California Water Code Section 13304**

GREKA OIL & GAS, INC., IS HEREBY GIVEN NOTICE:

On July 21, 2008, the Assistant Executive Officer of the Regional Water Quality Control Board, Central Coast Region (Water Board) issued Administrative Liability Complaint No. R3-2008-0063 (Original Complaint) to Greka Oil & Gas, Inc. (Greka).

Following the issuance of the Original Complaint, Greka requested a hearing and the Enforcement Staff and Greka (hereinafter collectively the "Parties") engaged in extensive informal and formal discovery in good faith to identify those material facts not in genuine dispute, and, if possible, resolve one or more of the four alleged violations of CAO No. R3-2006-0054 ("CAO") set forth in the Original Allegations, section I, paras. 6, 9-12, below. This joint effort included multiple meetings, further site investigations, the informal exchange of information, the production of documents, the depositions of the Parties' anticipated witnesses, and the exchange by the Parties' counsel of proposed statements of undisputed facts and a list of issues resolved.

As a result of these efforts, the Assistant Executive Officer and the Enforcement Staff determined that it should issue this First Amended Complaint, which supersedes and replaces the Original Complaint. Section I, below, sets forth the original factual allegations in the Original Complaint. Section II sets forth the amended factual allegations. Section III sets forth the civil liability assessment framework, and Section IV contains the Assistant Executive Officer's and Enforcement Staff's recommendation of civil liability.

Due to the Parties' resolution by settlement of the allegations in the First Amended Complaint, no public hearing has been set at this time for adjudication by the Water Board of the allegations set forth herein. Greka, however, has requested a hearing before the Water Board in the event an adjudicatory hearing is needed to resolve this matter. A public meeting has been scheduled for May 13, 2010, at which time the

Water Board will consider the settlement agreement reached by the Enforcement Staff and Greka of the allegations set forth in the First Amended Complaint.

I. ORIGINAL ALLEGATIONS

1. Greka owns and operates oil production facilities in the Casmalia, Cat Canyon, Santa Maria Valley, and Zaca Oilfields located in Santa Barbara County. These facilities include oil wells, pipelines, and separation and storage facilities.
2. On December 20, 2006, the Central Coast Water Board Executive Officer issued *Cleanup and Abatement Order No. R3-2006-0054 to Greka Oil & Gas, Inc., for the Casmalia, Cat Canyon, Santa Maria Valley, and Zaca Oilfields in Santa Barbara County* (CAO). The Executive Officer issued the CAO in response to Greka's improper storage of soils impacted by Greka's spills of crude oil or kerosene-diesel diluent. Thirty-seven piles of petroleum-impacted soils include some that are stored without adequate containment, allowing materials contaminated with crude oil and/or kerosene-diesel diluent to erode and wash into surface waters of the state. These petroleum-impacted soils are also stored in piles without liners, which allows toxic chemical compounds to infiltrate underlying soils and potentially migrate to groundwater.
3. Discharges of petroleum-impacted soil to land for storage, treatment, or disposal are discharges of waste as defined by the California Water Code.
4. The groundwater underlying the 37 waste pile sites has beneficial uses including domestic and municipal supply, agricultural supply, and industrial supply (Chapter 2, Section I of the *Central Coast Water Board's Water Quality Control Plan* [Basin Plan]). In addition to other standards, State Water Resources Control Board Resolution No. 68-16 (Antidegradation Policy) and State Water Resources Control Board Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304*) apply to underlying groundwater.
5. Surface waters in the vicinity of the waste pile sites include Schumann Canyon Creek, Bradley Canyon Creek, the Santa Maria River, Zaca Creek, and numerous unnamed surface waters. Beneficial uses of these surface waters include municipal and domestic water supply, recreation, and aquatic life (Table 2-1 of the Basin Plan).
6. This Complaint alleges that Greka violated the requirements of the CAO by failing to:
 - a. Remove wastes, including hazardous wastes, from its leases in the Casmalia, Cat Canyon, Santa Maria Valley, and Zaca Oilfields by

transporting these wastes under manifest to an authorized waste disposal facility;

- b. Move waste potentially eligible for beneficial reuse to authorized management facilities within 30 days of the Central Coast Water Board Executive Officer's approval of Greka's application;
 - c. Complete all necessary laboratory analyses required to determine whether petroleum-impacted soil in waste piles is eligible for beneficial reuse, and to submit new revised applications for beneficial reuse, or remove these wastes from the site for lawful disposal; and,
 - d. Submit a workplan by the required date to assess the potential impacts to underlying soil and groundwater at the location of each removed soil pile.
7. On April 8, 2008, Central Coast Water Board staff mailed a Notice of Violation to Greka describing the violations alleged in this complaint, the associated maximum liabilities, and the Water Board's authority to impose monetary liability.
8. The following allegations involve extended compliance dates that Central Coast Water Board staff informally agreed upon at Greka's representatives request, based on their promise to comply with the dates. Greka failed to comply with all of the extended dates. For the purposes of enforcement, staff is not obligated to adhere to the extended dates because Greka failed to comply with them. Therefore, as stated in the Notice of Violation dated April 8, 2008, the days of violation are calculated using the formal due dates from the CAO.
9. ***VIOLATION COUNT 1: FAILURE TO LAWFULLY DISPOSE OF HAZARDOUS WASTE PILES.*** The CAO required Greka to remove all petroleum-impacted soil from its leases in the Casmalia, Cat Canyon, Santa Maria Valley, and Zaca Oilfields by lawfully transporting it under manifest to an authorized waste disposal facility no later than January 31, 2007. This requirement applied to all waste that Central Coast Water Board staff did not approve for beneficial reuse.

On January 11, 2007, Central Coast Water Board staff met with Greka's personnel and at their request agreed to allow Greka to provide a disposal schedule by April 30, 2007. Greka did not submit the schedule, nor did it dispose of the waste.

On October 11, 2007, Central Coast Water Board staff again met with Greka's personnel, who agreed to submit a disposal schedule for two waste piles by October 26, 2007. Laboratory testing has confirmed that these piles contain hazardous wastes. Greka submitted a schedule via

electronic mail, which indicated Greka would dispose of the two waste piles on or around January 1, 2008, with progress updates every two weeks. Greka did not dispose of the waste, or provide progress updates.

Greka failed to dispose of the waste by the due date in the CAO, or by the later dates it orally agreed upon, thereby violating Water Code Section 13304. As of July 21, 2008, Greka has violated the Order's disposal date deadline for 537 days.

10. ***VIOLATION COUNT 2: FAILURE TO MOVE WASTE PILES TO AUTHORIZED ON-SITE MANAGEMENT FACILITIES.*** The CAO required Greka to submit an application for the operation of waste pile management facilities by December 30, 2006, and to move waste piles potentially eligible for beneficial reuse to the authorized facilities within 30 days of the Executive Officer's approval of the application.

On January 11, 2007, Central Coast Water Board staff met with Greka's personnel and at their request agreed to extend the application deadline to February 28, 2007. Greka submitted the application on February 28, 2007, and the Central Coast Water Board approved it on April 13, 2007, thereby establishing May 13, 2007, as the 30-day due date to move materials to the management facilities.

Greka failed to move waste to approved management facilities, thereby violating Water Code Section 13304. As of July 21, 2008, Greka violated the Order's waste pile transfer requirements for 435 days.

11. ***VIOLATION COUNT 3: FAILURE TO ANALYZE WASTE PILES TO DETERMINE HAZARDOUSNESS OR REUSABILITY.*** For Greka's waste with potential for reuse, the CAO required Greka to complete all analyses necessary to determine whether petroleum-impacted soil in its waste piles is eligible for beneficial reuse. The CAO further required Greka to submit new, revised applications for beneficial reuse and/or remove its waste from the site by February 28, 2007. Greka did not completely analyze all of the waste, nor did it remove the waste that was not characterized.

Greka failed to either completely analyze all potentially reusable wastes, or appropriately dispose of them, by February 28, 2007, thereby violating Water Code Section 13304. As of July 21, 2008, Greka violated the Order's waste analysis and/or disposal requirements for 509 days.

12. ***VIOLATION COUNT 4: FAILURE TO SUBMIT WORKPLAN TO ASSESS IMPACTS TO UNDERLYING SOILS.*** The CAO required Greka to submit a workplan to assess the potential impacts to underlying soil at the location of each removed waste pile by January 31, 2007.

On January 11, 2007, Central Coast Water Board staff met with Greka's representatives and at their request agreed to extend this deadline to

March 30, 2007. Greka failed to comply with the extended deadline. On September 24, 2007, Greka submitted the draft workplan.

Greka failed to comply with the underlying soil assessment workplan requirements, thereby violating Water Code Section 13304. Greka violated the Order's workplan submittal requirements for 236 days.

13. Violations of cleanup and abatement order requirements made pursuant to California Water Code Section 13304 subject Greka to liability under California Water Code Section 13350.
14. Water Code Section 13350 states that any person who violates any cleanup and abatement order shall be liable civilly for up to \$5,000 for each day in which the violation occurs.
15. Water Code Section 13350 also states that where a discharge occurs and a cleanup and abatement order is in place, the civil liability shall not be less than \$500 for each day the discharge occurs and each day the cleanup and abatement order is violated.
16. Discharges of petroleum-impacted soil to land for storage, treatment, or disposal, such as the waste piles subject to the requirements of the CAO are discharges of waste as defined by the California Water Code.
17. The above allegations indicate Greka violated Water Code Section 13304 for 1,717 days as of July 21, 2008, and is therefore subject to a minimum liability of at least \$858,500, and a maximum civil liability of at least \$8,585,000 pursuant to Water Code Section 13350. For each day of violation after July 21, 2008, the minimum liability increases by \$500, and the maximum liability increases by \$5,000.

II. AMENDED ALLEGATIONS

1. To the extent the Original Allegations set forth in paragraphs 1 through 17, above, are inconsistent with the amended allegations set forth below, the Amended Allegations supersede the Original Allegations.
2. Since the Original Complaint was issued, the Parties have engaged in extensive informal and formal discovery in good faith to identify those material facts which are not in genuine dispute, and, if possible, resolve one or more of the four alleged violations of the CAO set forth in the Original Allegations, at paras. 6, 9-12, above. This joint effort included multiple meetings, further site investigations, the informal exchange of information, the production of documents, the depositions of the Parties' anticipated witnesses, and the exchange by the Parties' counsel of proposed statements of undisputed facts and a list of issues resolved.

3. The Parties were able to reach agreement on almost all facts material to the four alleged violations of the CAO, which caused the Assistant Executive Officer to issue this First Amended Complaint. As a direct result of this effort, the Parties also found themselves interested in attempting to resolve their remaining disputes by settlement.
4. Thus, at the joint request of the Parties, with the consent of Chair Jeffrey Young, and the approval of Water Board Advisory Staff member Frances McChensey, Executive Officer Roger Briggs was asked and agreed to assist the Parties in their settlement discussions.
5. In late March and early April 2010, the Parties met with the Executive Officer on multiple occasions to discuss settlement. On April 9, 2010, the Parties reached a settlement of all open issues.
6. As a result of this process, the Assistant Executive Officer and the Enforcement Staff also determined that the four alleged violations of the CAO set forth in the Original Complaint should be amended as set forth below.
7. ***AMENDED VIOLATION COUNT 1 – FAILURE TO LAWFULLY DISPOSE OF HAZARDOUS WASTE PILES:*** With regard to Count 1, Section I, paragraphs 6.a. and 9, above, which alleges that Greka violated the CAO by failing to "[r]emove wastes, including hazardous wastes, from its leases in the Casmalia, Cat Canyon, Santa Maria Valley, and Zaca Areas by transporting them under manifest to an authorized waste disposal facility," the following facts have been determined through the Parties' joint efforts described in paragraph 2 to be undisputed:
 - a. The CAO, para. 3, p. 5, authorized Greka to, by February 28, 2007, "complete all additional analyses required to determine whether petroleum-impacted soil in waste piles is eligible for beneficial reuse;"
 - b. On February 28, 2007, Greka timely submitted all required data and requested that: (i) its original beneficial reuse applications be approved; and (ii) the existing soil piles under its control, many of which had been inherited from prior operators, be approved for beneficial reuse;
 - c. Because of (i) the volume of soil data submitted, (ii) the complexity of the testing protocols used to characterize the existing soil piles, (iii) ambiguity regarding the appropriate and applicable testing procedures for determining if the soil piles contained hazardous wastes and qualified for beneficial reuse, and (iv) the need for legal guidance, Water Board staff and Greka's consultants were unable to agree on the eligibility for beneficial reuse of all existing soil piles

until after the Original Complaint was issued, appropriate experts were consulted, and legal guidance was provided by counsel for the Enforcement Staff and Greka.

- d. As a result of this effort, on May 3, 2010, the Executive Officer issued three letters approving Greka's beneficial reuse applications. In these letters, the Executive Officer also approved and/or conditionally approved the beneficial reuse of 29 existing soil piles identified in Greka's beneficial reuse applications (the "Existing Soil Piles"). Attached hereto as **Exhibits A, B, and C** are copies of these approval letters.
 - e. Thus, the only remaining factual and legal dispute with regard to the allegations in Count 1 is whether Greka was required by the CAO to dispose of two of the Existing Soil Piles which had been initially, but erroneously, characterized as hazardous under the RCRA ignitibility characteristic. The Enforcement Staff believes that these two soil piles should have been removed by the date required in the CAO, which date was informally extended subsequently by Water Board staff prior to the issuance of the Original Complaint. Greka believes that once it submitted all necessary testing data on February 28, 2007, as authorized under the CAO, it was not required by the CAO to remove and dispose of either of these two Existing Soil Piles until a final determination had been made regarding their eligibility for beneficial reuse. After a careful and thorough review of the record, the Parties could not agree upon a date by which Greka was required to remove the two stockpiles at issue.
 - f. Thus, as of the date of this First Amended Complaint, it is unclear from the record how many days that the alleged violation occurred.
8. ***AMENDED VIOLATION COUNT 2 -- FAILURE TO MOVE WASTE PILES TO AUTHORIZED ON-SITE MANAGEMENT FACILITIES:*** With regard to Count 2, Section I, paragraphs 6.b. and 10, above, which allege that Greka violated the CAO by failing to "[m]ove waste potentially eligible for beneficial reuse to authorized management facilities within 30 days of the Central Coast Water Board Executive Officer's approval of Greka's (Waste Pile Management Facility [WPMF]) application," the following facts have been determined to be undisputed:
- a. The CAO, para. 2, p. 5, required Greka, in part, to place all "[s]tockpiles potentially eligible for beneficial reuse . . . in authorized waste pile management facilities while additional chemical characterization is in progress within 30 days of the Executive Officer's approval of the waste pile management facility [WPMF] applications."

- b. The Executive Officer approved Greka's WPMF applications on April 13, 2007.
 - c. Some 45 days prior to that approval, on February 28, 2007, all chemical characterization of Greka's soil piles had been completed and submitted to the Water Board staff. Thus, Greka was not required to move any Existing Soil Piles to its WPMFs for further chemical characterization.
 - d. On May 3, 2010, the Executive Officer approved Greka's beneficial reuse applications and determined that the Existing Soil Piles are eligible for beneficial reuse.
 - e. Accordingly, the Enforcement Staff has withdrawn Count 2.
9. ***AMENDED VIOLATION COUNT 3 -- FAILURE TO ANALYZE WASTE PILES TO DETERMINE HAZARDOUSNESS OR REUSABILITY:*** With regard to Count 3, Section I, paragraphs 6.c. and 11, above, which alleges that Greka violated the CAO by failing to "[c]omplete all necessary laboratory analyses required to determine whether petroleum-impacted soil in waste piles [are] eligible for beneficial reuse . . . or remove these wastes from the site for lawful disposal," the following facts have been determined to be undisputed:
- a. On February 28, 2007, Greka timely submitted all necessary laboratory analyses as required by the CAO.
 - b. As noted in Section II, para. 7.c., above, because of (i) the volume of soil data submitted, (ii) the complexity of the testing protocols used to characterize the existing soil piles, (iii) ambiguity regarding the appropriate and applicable testing procedures for determining if the soil piles contained hazardous wastes, and (iv) the need for legal guidance, Water Board staff and Greka's consultants were unable to agree on the eligibility for beneficial reuse of all existing soil piles until after the ACL Complaint was issued, appropriate experts were consulted, and legal guidance was provided by counsel for the Enforcement Staff and Greka.
 - c. Accordingly, the Enforcement Staff has withdrawn Count 3.
10. ***AMENDED VIOLATION COUNT 4 -- FAILURE TO SUBMIT WORK PLAN TO ASSESS IMPACTS TO UNDERLYING SOILS:*** With regard to Count 4, Section I, paragraphs 6.d. and 12, above, which alleges that Greka violated the CAO by failing to "[s]ubmit a workplan by the required date to assess the potential impacts to underlying soil and groundwater at the location of each removed soil pile," the following facts are undisputed:

- a. The original date set forth in the CAO for submittal of the workplan was January 31, 2007.
- b. This original date was informally extended by Water Board staff to March 30 and then to April 30, 2007.
- c. There is ambiguity in the record as to whether the April 30, 2007 due date for the work plan was informally extended further by Water Board staff and for how long.
- d. Greka submitted its draft work plan to Water Board staff for review on September 24, 2007.
- e. Thus, as of the date of this First Amended Complaint, it is unclear from the record how many days the alleged violation occurred.

III. PROPOSED CIVIL LIABILITY

1. In determining civil liability for violation of the CAO, Water Code section 13327 requires the Water Board to consider "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."
2. Pursuant to Water Code section 13350(e)(1), an administrative civil liability imposed by the Water Board "on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs."
3. Pursuant to Water Code section 13350(e)(1)(A) and (B), where "there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated" or "when there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs."
4. Pursuant to Water Code section 13350(f), the Water Board "may not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless [it] makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327."

5. Because there is uncertainty with regard to the total number of days of violation of the CAO as alleged in Amended Counts 1 and 4, above, and because Counts 2 and 3 have been withdrawn, the administrative civil liability amount should be determined by application of the factors set forth in Water Code section 13327 as authorized by Water Code section 13350(f).
6. Accordingly, the Assistant Executive Officer and the Enforcement Staff provide the following evaluation of the administrative civil liability assessment factors under Water Code section 13327:
 - a. Nature, circumstances, extent, and gravity of the violations:
 - (1) Count 1: As a result of (a) the Parties' joint good faith effort to agree on the material facts not in dispute and to resolve, if possible, the four alleged violations, (b) the approval of Greka's beneficial reuse applications, which included the approval of the beneficial reuse of the Existing Soil Piles, and (c) the ambiguity in the record regarding the extended date by which the two soil piles, erroneously characterized as hazardous, should have been removed, the total number of days of violation set forth in the Original Allegations under Count 1 of 537 days (from October 26, 2007, to July 21, 2008) is not an appropriate measure of the nature, circumstances, extent or gravity of the violation alleged in Count 1. Under these circumstances, the imposition of a moderate penalty for the alleged violation of the CAO identified in the Amended Allegations regarding Count 1, at Section II, para. 7, above, is appropriate.
 - (2) Counts 2 and 3: Withdrawn.
 - (3) Count 4: As a result of the Parties' joint good faith effort to agree on the material facts not in dispute and to resolve, if possible, the four alleged violations, the ambiguity in the record regarding the due date for submission of the work plan beyond April 30, 2007, the fact that the work plan was submitted on September 24, 2007, and the fact that the work plan will not be needed until after the soil piles have been beneficially reused, the total number of days of alleged violation of 236 days in the Original Allegations, Section I, para. 12, above, is not an appropriate measure of the nature, circumstances, extent or gravity of the violation alleged in the Amended Allegations regarding Count 4. Under these circumstances, the imposition of a small penalty for the alleged violation of the CAO as set forth in the Amended

Allegations regarding Count 4, at Section II, para. 10, above, is appropriate.

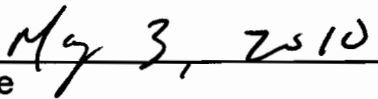
- b. Discharge susceptibility to cleanup or abatement: As a result of the Executive Officer's approval on May 3, 2010, of Greka's beneficial reuse applications, which included the approval of the beneficial reuse of the Existing Soil Piles, they will be removed and reused.
- c. Discharge toxicity: As a result of the Executive Officer's approval on May 3, 2010, of Greka's beneficial reuse applications, which included the approval of the beneficial reuse of the Existing Soil Piles, toxicity is not an issue with respect to the Existing Soil Piles.
- d. Greka's Ability to Pay the Liability, and the Effect on Greka's Ability to Continue Business: Under the circumstances set forth in the Amended Allegations, Section II, above, this factor is inapplicable.
- e. Violation history: The Executive Officer issued the CAO because Greka's reuse of its the Existing Soil Piles had been denied. Greka has not heretofore violated a cleanup and abatement order or any other order issued by the Water Board.
- f. Voluntary cleanup efforts: As a result of the Executive Officer's approval on May 3, 2010, of Greka's beneficial reuse applications and the reuse of the Existing Soil Piles, this factor in no longer applicable.
- g. Degree of culpability: As a result of (a) the Parties' joint good faith effort to agree on the material facts not in dispute and to resolve, if possible, the four alleged violations, (b) the approval of Greka's beneficial reuse applications, which included the approval of the beneficial reuse of the Existing Soil Piles, and (c) the ambiguity in the record regarding the dates to which Staff may have extended the dates at issue under Counts 1 and 4, this factor weighs in favor of a moderate penalty.
- h. Economic benefit or savings: Because Greka must now incur the same costs to reuse the Existing Soil Piles as it would have before, and given the commitment of resources made and costs incurred by Greka over the last three years in connection with this matter, there was no measurable economic benefit or cost savings to Greka by undertaking to comply with the CAO as it did.
- i. Other matters as justice may require: The good faith efforts of the Parties described above militate in favor of reduced civil liability.

IV. RECOMMENDATION

Upon consideration of factors set forth above, the Enforcement Staff recommends civil liability in the amount of \$400,000 in civil penalties, \$200,000 of which will be in payment toward a supplemental environmental project approved by the Water Board, \$400,000 in civil penalties if Greka does not beneficially reuse one half of the Existing Soil Piles by a date determined by the Water Board, and an additional \$400,000 in civil penalties if Greka does not beneficially reuse the remaining one half of the Existing Soil Piles by a date determined by the Water Board.



Michael J. Thomas
Assistant Executive Officer



Date