

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2016-0021

MANDATORY PENALTY
IN THE MATTER OF

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

This Order is issued to the Original Sixteen to One Mine, Inc. (hereafter Discharger) pursuant to California Water Code section 13385, which authorizes the imposition of Administrative Civil Liability (ACL). This Order is based on the findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2015-0002 (NPDES CA0081809).

The Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds:

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 Fork Yuba River and a water of the United States.
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. On 5 February 2015, the Board adopted WDRs Order R5-2015-0002 which contained new requirements and superseded Order R5-2002-0043 except for enforcement purposes.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.
3. On 17 April 2015, the Board issued Time Schedule Order (TSO) R5-2015-0035 pursuant to Water Code section 13300. The TSO provides protection from mandatory minimum penalties (MMPs) for electrical conductivity, arsenic, antimony, cadmium, copper, iron, lead, manganese, and nickel until 16 April 2020. This Complaint considers the protection from MMPs provided by the TSO.
4. This Order addresses administrative civil liability for effluent violations that occurred during the period from 16 April 2015 through 30 September 2015. These violations are specifically identified in Attachment A to this Complaint as subject to MMPs. Attachment A to this Order is attached hereto and incorporated herein by this reference.
5. On 18 December 2015, Central Valley Water Board staff issued a draft Record of Violations (ROV) to the Discharger for the period from 16 April 2015 through 30 September 2015. The Discharger responded on 4 January 2016 and objected to the violations for antimony. The Discharger contends that the penalties are excessive considering the lack of history in the area. However, the Discharger did not provide any information to show that the laboratory results were in error or should otherwise be dismissed, and therefore, MMPs must be assessed.
6. 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.

7. 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.

8. 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.

9. 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...:

Effluent Limitations			
Parameter	Units	Average Monthly	Maximum Daily
Antimony	µg/L	6	12

10. TSO R5-2015-0035 Directive 2, states in part:

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

Interim Effluent Limitations			
Parameter	Units	Interim Average Monthly	Interim Maximum Daily
Antimony	µg/L	35	50

- 11. TSO R5-2015-0035 contains interim effluent limitations for antimony; 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.
- 12. According to the Discharger's self-monitoring reports, the Discharger committed two (2) serious Group II violations of the above effluent limitations contained in WDRs Order R5-2015-0002, as shown in Attachment A. These violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2015-0002 by 20 percent or more. The mandatory minimum penalty for these serious violations is **six thousand dollars (\$6,000)**.
- 13. The total amount of the mandatory penalty assessed for the cited effluent violations is **six thousand dollars (\$6,000)**. As stated herein, a detailed list of the cited effluent violations is included in Attachment A. This Order addresses administrative civil liability only for violations that are specifically identified in Attachment A as subject to mandatory minimum penalties.
- 14. Issuance of this Administrative Civil Liability Order 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).

IT IS HEREBY ORDERED that The Original Sixteen to One Mine, Inc. shall pay a civil liability of \$6,000 as follows:

1. **Within 30 days of adoption of the Order**, the Discharger shall pay six thousand dollars (\$6,000) by check made payable to the State Water Pollution Cleanup and Abatement Account. The check shall have written upon it the number of this ACL Order.
2. In the event that The Original Sixteen to One Mine, Inc. fails to comply with the requirements of this Order, this matter may be referred to the Office of the Attorney General or a debt collection agency for enforcement of the terms of this Order.
3. This Order is final upon signature.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code 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 that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final 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.

I, Pamela C. Creedon, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region on 21 April 2016.

ORIGINAL SIGNED BY

PAMELA C. CREEDON, Executive Officer

Attachment A: Record of Violations

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2016-0021**

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

RECORD OF VIOLATIONS (16 April 2015 – 30 September 2015) MANDATORY MINIMUM PENALTIES
(Data reported under Monitoring and Reporting Program R5-2015-0002 and Time Schedule Order 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>
28-Apr-15	Antimony	µg/L	12	50	62.3	Daily Maximum	2	998935
30-Apr-15	Antimony	µg/L	6	35	62.3	Monthly Average	2	998936

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:</u>	<u>9/30/15</u>
Group I Serious Violations:	0
Group II Serious Violations:	2
Non-Serious Violations Not Subject to MMPs:	0
<u>Non-serious Violations Subject to MMPs:</u>	<u>0</u>
Total Violations Subject to MMPs:	2

Mandatory Minimum Penalty = (2 Group II Serious Violations) x \$3,000 = \$6,000