

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2019-0042

MANDATORY PENALTY  
IN THE MATTER OF

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

This Administrative Civil Liability Order (Order) is issued to Original Sixteen to One Mine, Inc. (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385. This Order is based on allegations 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 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 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 On 5 February 2015, the Board adopted WDRs Order R5-2015-0002 (NPDES CA0081809), which contained new requirements and superseded Order R5-2002-0043 except for enforcement purposes.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 Discharger complies with the interim effluent limits in the TSO for electrical conductivity, arsenic, antimony, cadmium, copper, iron, lead, manganese, and nickel, then it is protected from mandatory minimum penalties (MMPs) for these constituents. However, if the Discharger 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 Order considers the protection from MMPs provided by the TSO.
5. On 6 April 2018, the Board amended TSO R5-2015-0035 based on new information provided by the Discharger and adopted TSO R5-2015-0035-01. TSO R5-2015-0035 cited incorrect final effluent limitations from WDRs Order R5-2015-0002. At the time that the Central Valley Water Board adopted TSO R5-2015-0035, the most recent water quality data for the Facility discharge consisted of two sampling events conducted by Central Valley Water Board staff in 2011. Interim limitations were established based on limited dataset. Since adoption of WDRs Order R5-2015-0002 in February 2015, the Discharger had conducted 10 quarterly effluent monitoring events. The amended TSO R5-2015-0035-01 revised the interim effluent limitations to better represent variability of the discharge.

### CURRENT ENFORCEMENT ACTION

6. This Order addresses administrative civil liability for effluent violations that occurred during the period from 1 January 2017 through 31 December 2018. These violations are specifically identified in Attachment A to this Order as subject to MMPs. Attachment A to this Order is attached hereto and incorporated herein by this reference.
7. On 13 February 2018, Central Valley Water Board staff issued a draft Record of Violations (ROV) to the Discharger for the Third and Fourth Quarter 2017. On 28 February 2018, the Discharger responded asserting that weather was a significant contributing factor to the Second Quarter 2017 test results for arsenic (identified as violation #3 in Attachment A), and that the exceedance had no negative environmental effect on Kanaka Creek. For these reasons, the Discharger asked the Central Valley Water Board Prosecution Team to remove the proposed eighteen thousand dollar (\$18,000) MMP.<sup>1</sup> Central Valley Water Board Prosecution Team responded on 2 March 2018 informing the Discharger that Central Valley Water Board permitting staff consider dilution due to rainfall, the impact of the constituents being discharged from the Facility, and the need for associated effluent limitations when the WDRs are adopted by the Board and that the Discharger should contact permitting staff if it is concerned with the permit requirements.
8. On 29 August 2018, Central Valley Board staff conducted a compliance inspection at the Facility. During the inspection staff took effluent and receiving water samples. The samples were analyzed for total recoverable metals, dissolved metals, total suspended solids, and turbidity. The effluent sample exceeded the effluent limitation for total dissolved solids.
9. On 13 March 2019, Central Valley Water Board staff issued an updated draft ROV for the period from 1 January 2017 through 31 December 2018, identifying six effluent limit violations,<sup>2</sup> four of which are subject to MMPs in the amount of twelve thousand dollars (\$12,000). On 22 March 2019, the Discharger sent a response challenging the validity of the proposed MMPs claiming the water quality of Kanaka Creek is within acceptable limits before reaching beneficial uses.
10. Water Code section 13385, subdivisions (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

<sup>1</sup> Upon further review, only four (4) violations were determined to be subject to MMPs in the amount of twelve thousand dollars (\$12,000), as identified in Attachment A to this Order.

<sup>2</sup> The total suspended solid effluent limitation violation from the 29 August 2018 compliance inspection was inadvertently left out of the 13 March 2019 ROV.

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	Instantaneous Minimum	Instantaneous Maximum
pH	--	--	--	6.5	8.5
Arsenic	µg/L	10	20	--	--
Total Suspended Solids	mg/L	20	30	--	--

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

d. Electrical Conductivity. For a calendar year, the annual average effluent concentration shall not exceed 900 µmhos/cm.

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
Electrical Conductivity	µmhos/cm	1426	2867

16. TSO R5-2015-0035 does not contain an interim effluent limitation for pH or for total suspended solids.
17. As shown in Attachment A, the Discharger exceeded the interim effluent limits for arsenic and electrical conductivity contained in TSO R5-2015-0035 and therefore Water Code section 13385, subdivision (j), does not exempt those violations from MMPs. Additionally, the Discharger exceeded the effluent limit for TSS contained in WDRs Order R5-2015-0002.
18. Arsenic is a Group II pollutant. According to the Discharger's self-monitoring reports, the Discharger committed four (4) serious Group II violations subject to MMPs under Water Code section 13385, subdivision (h). The four (4) serious Group II violations are defined as serious and are subject to MMPs because the measured concentration of a Group II constituent exceeded the effluent limits in WDRs R5-2015-0002 by 20 percent or more. The mandatory minimum penalty for these violations is **twelve thousand dollars (\$12,000)**. 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.
19. Notwithstanding the issuance of this Order, 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.

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, subdivision (a)(2).

**IT IS HEREBY ORDERED that:**

1. Pursuant to Water Code section 13385, the Discharger shall be assessed an Administrative Civil Liability in the amount of twelve thousand dollars (\$12,000), as the mandatory minimum penalty for the violations found herein to have been committed by the Discharger.
2. Payment shall be made no later than thirty (30) days from the date of issuance of this Order by check payable to the State Water Pollution Cleanup and Abatement Account, and shall have the number of this Order written upon it.
3. In the event that the Discharger 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.

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/](http://www.waterboards.ca.gov/public_notices/petitions/water_quality/) or will be provided upon request.

I, Patrick Pulupa, 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 6 June 2019.

  
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PATRICK PULUPA, Executive Officer

Attachment A: Record of Violations

**ATTACHMENT A TO ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2019-0042  
MANDATORY MINIMUM PENALTIES**

**The Original Sixteen to One Mine**

**RECORD OF VIOLATIONS (1 January 2017 – 31 December 2018) 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>
*	31-Dec-16	Copper	µg/L	3.1	10	115.9	Monthly Average	2	1021051
1	29-Jun-17	Arsenic	µg/L	20	1000	1308	Maximum Daily	2	1032320
2	29-Jun-17	pH	S.U.	8.5	NA	8.64	Instantaneous Maximum	3	1032324
3	30-Jun-17	Arsenic	µg/L	10	700	1308	Monthly Average	2	1032325
4	31-Aug-17	Arsenic	µg/L	10	700	718.6	Monthly Average	2	1038873
5	31-Dec-17	Arsenic	µg/L	10	700	983.5	Monthly Average	2	1038874
6	31-Dec-17	Electrical Conductivity	µmhos/cm	900	†	1704	Annual Average	3	1038875
7 <sup>u</sup>	31-Aug-18	Total Suspended Solids	mg/L	20	NA	25	Average Monthly	3	1053474

\* Supporting violations addressed in ACLO R5-2017-0115

† Time Schedule Order (TSO) R5-2015-0035 contains interim electrical conductivity limitations based on maximum daily effluent limit (1426 µmhos/cm) and average monthly effluent limit (2867 µmhos/cm) averaging periods. Protection from MMPs was lost for electrical conductivity because the effluent concentration exceeded the interim maximum daily effluent limitation in the second and third quarter of 2017, which were reported as 2760 µmhos/cm and 2430 µmhos/cm. Two additional electrical conductivity samples were collected during 2017, which were 406 µmhos/cm and 1220 µmhos/cm. The annual average is calculated by adding the samples taken in 2017 and dividing it by the number of samples, which results in 1704 µmhos/cm and exceeds the WDRs annual average limit.

<sup>u</sup> Sample taken on a compliance inspection by Water Board staff on 29 August 2018 and was inadvertently left out of the ROV issued on 13 March 2019.

**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.

<b>VIOLATIONS AS OF:</b>	<b>12/31/18</b>
Group I Serious Violations:	0
Group II Serious Violations:	4
Non-Serious Violations Not Subject to MMPs:	3
<u>Non-Serious Violations Subject to MMPs:</u>	<u>0</u>
<b>Total Violations Subject to MMPs:</b>	<b>4</b>

**Mandatory Minimum Penalty =  
(4 Group II Serious Violations Subject to MMPs) x \$3,000 = \$12,000**