ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0521
CONSIDERATION OF FACTORS PURSUANT TO CWC SECTION 13327

California Water Code (CWC) Section 13327 states: "*In determining the amount of civil liability, the regional board…shall take into consideration 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.*" In preparing the Administrative Civil Liability Complaint, Central Valley Water Board staff considered the following:

Nature and Extent of Violations: The Oaks Community Association (Discharger) violated Waste Discharge Requirements Order No. 92-080 by discharging up to 125,000 gallons of raw sewage to an area outside the permitted treatment and disposal area from 24 December 2008 through 29 December 2008. The spill occurred following failure of a lift station pump after a power outage. The pump did not re-start after power was restored. A portable pump was put in place sometime on 24 December 2008, but the pump and/or operations oversight and maintenance were inadequate to prevent or contain the sewage. Raw sewage entered a broad drainage swale and an area exhibiting characteristics of a wetland. No direct evidence of a discharge to Jackson Creek was observed. The spill was reported to Amador County Environmental Health on 29 December 2008. Following the report to Environmental Health, the Discharger reported the spill to Regional Water Board staff and had standing wastewater in the spill area removed by a septage hauler on 29 December 2008.

The Discharger failed to provide reports required by WDRs Order No. 92-080. The Discharger has violated Provision C.4, which requires compliance with Standard Provisions and Reporting Requirements, and Standard Provision A.6 by failing to notify Regional Water Board staff as soon as it had knowledge of the spill and failing to provide a written report, including a timetable for corrective actions, within two weeks of the spill. The Discharger has violated Standard Provision A.7 by failing to maintain the lift station pumps in good working order to assure control of the raw sewage and compliance with the WDRs.

Circumstances: The circumstances are such that the December 2008 spill could have been avoided had the Discharger expended the necessary resources to properly maintain the lift station pumps to prevent failure and to procure and maintain safeguards necessary to prevent loss of control over wastes (*e.g.*, alternate power sources, retention capacity, operating procedures, *etc.*). Had the Discharger maintained a copy of the WDRs, including Standard Provisions and Reporting Requirements, at the wastewater treatment facility or main office for reference by operating personnel and ensured that operating personnel were familiar with the contents, as required by the WDRs, the failures to provide complete and timely reports might have been prevented.

Gravity: The Discharger failed to prevent the discharge of raw sewage to land outside the authorized disposal area. Potential health risks from bacteria and viruses resulting from incompletely treated sewage are a concern for humans and wildlife habitat. The spilled wastewater was not nitrified, and likely contained ammonia in concentrations lethal to aquatic life.

Toxicity: There was no obvious evidence that the sewage entered Jackson Creek and there were no reported fish kills subsequent to the spills. The discharge did, however, enter a broad drainage swale overgrown with cattails. The swale exhibits characteristics of a wetland, but is not known to be a jurisdictional wetland. Ammonia in sewage is toxic to aquatic life. The degree of toxicity from the discharge is unknown.

Susceptibility of the Discharge to Cleanup: The Discharger hired a septage hauler to remove 6,800 gallons of commingled sewage and stormwater from the spill area. The remainder of the spilled sewage likely percolated into the underlying soil, although a small portion may have been carried off-site with stormwater runoff.

Degree of Culpability: The Discharger is required to be familiar with the requirements of WDRs Order No. 92-080, including Standard Provisions and Reporting Requirements, and was aware of the consequences of power failure or loss of pumping capacity. The December 2008 spill could have been avoided had the Discharger properly maintained the lift station pumps to prevent failure and procured and maintained safeguards necessary to prevent loss of control over wastes. Had the Discharger maintained a copy of the WDRs, including Standard Provisions and Reporting Requirements, at the WWTF or main office for reference by operating personnel and ensured that operating personnel were familiar with the contents, as required by the WDRs, the failures to provide complete and timely reports might have been prevented. Therefore, the Discharger is fully culpable for violating the WDRs.

Notification of Violation: The Discharger failed to provide prompt notification of the spill.

Degree of Cooperation: The Discharger has been marginally cooperative in providing the required reports. Reports have been submitted, but have been incomplete and have been submitted after the due dates. Some of the spilled sewage was recovered following direction by Amador County Environmental Health.

Prior History of Violations: Since adoption of the WDRs in 1992, the Discharger has received eight Notices of Violation (NOVs). Seven of the NOVs were issued between 3 August 2000 and 30 May 2002 for violations of the minimum pond dissolved oxygen limitation, exceedance of effluent biochemical oxygen demand (BOD) and settleable solids limitations, and failure to control weed growth around the wastewater treatment ponds. The eighth NOV was issued on 20 July 2005 for a 100 to 200-gallon raw sewage spill from the collection system. In addition to the violations cited in the NOVs, the Discharger has been in violation of the Standard Provisions requirement for safeguards to prevent loss of control over wastes in the event of failure of any electrically operated equipment since at least June 2001.

Economic Benefit: The Discharger realized an economic benefit from (a) deferred, and possibly avoided, costs related to implementing safeguards to prevent the necessary resources to properly maintain the lift station pumps to prevent failure and to procure and maintain safeguards necessary to prevent loss of control over wastes (*e.g.*, alternate power sources, retention capacity, operating procedures, *etc*.) and (b) avoided costs related to an unknown amount of maintenance staff time required to properly maintain the lift station pumps.

Other Matters as Justice May Require

a. **Staff Costs**: Staff costs to generate and process this ACL Complaint to date are estimated to be $80 x 100 hours = $9,600. If the Discharger requests a Board hearing or proposes a Supplemental Environmental Project (SEP), significant additional staff work will be required for agenda preparation and a Board hearing. It is estimated that this will result in an additional 100 hours of staff time. The total staff cost is estimated to range from approximately $8,000 to $16,000.

b. **Ability of the Discharger to Pay**: Staff is not aware of any reason why the Discharger is unable to pay the liability.