

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2010-0057

For

Violation of Waste Discharge Requirements
Order No. R1-2006-0045 (NPDES No. CA0022764)

In the Matter of
City of Santa Rosa
Subregional Water Reclamation System
WDID No. 1B830990SON

Sonoma County

This administrative civil liability complaint (Complaint) is issued under the authority of California Water Code (CWC) 13323 to the City of Santa Rosa (Discharger) to assess administrative civil liability pursuant to CWC section 13385 for violations of Waste Discharge Requirements Order No. R1-2006-0045, National Pollution Discharge Elimination System (NPDES) No. CA 0022764 (WDRs); Order No. R1-2008-0091, which amended the WDRs, and State Water Resources Control Board (State Water Board) Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (General Order) that occurred between January 1, 2007 and February 28, 2010.

The Assistant Executive Officer of the Regional Water Quality Control Board, North Coast Region (Regional Water Board), hereby gives notice that:

1. The Discharger owns, operates, and maintains the Subregional Water Reclamation System (System), a publicly owned treatment works that consists of a wastewater collection system, wastewater treatment facility, effluent disposal system, and water recycling facilities. The System is located at 4300 Llano Road in Santa Rosa, California. The System serves the communities of Cotati, Rohnert Park, Santa Rosa, Sebastopol, and the unincorporated South Park County Sanitation District—all located in Sonoma County in California.
2. The System is permitted under the WDRs to discharge an average of 21.3 million gallons of treated wastewater per day. Reuse and disposal of all advanced treated water is accomplished through a system that combines water reclamation and recharge with discharge to surface waters during the allowable discharge period (October 1 through May 14) as set forth in the Water Quality Control Plan for the North Coast Region (Basin Plan).
3. Sanitary sewer overflows (SSOs) are discharges from sanitary sewer systems of domestic, industrial, and commercial wastewater. SSOs contain high levels of suspended solids, pathogenic organisms, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants. SSOs may cause a public nuisance when untreated wastewater is discharged to areas with high public exposure, such as streets or surface waters used for drinking, fishing, or body contact recreation. SSOs may pollute surface or ground waters, threaten public

health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters.

4. Unless waived, the Regional Water Board will hold a hearing on this Complaint at its **July 15, 2010**, meeting located at 5550 Skylane Blvd, Ste A, Santa Rosa, CA. The Discharger or its representative will have an opportunity to be heard and contest the allegations in this Complaint and the imposition of the civil liability. Not less than 10 days before the hearing date, an agenda for the meeting will be available on the Regional Water Board's website:
http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/.
5. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed civil liability, or refer the matter to the Attorney General to have a Superior Court consider enforcement. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by submitting a signed waiver and paying the civil liability in full or by taking other actions as described in the attached waiver form. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this administrative civil liability complaint through hearing. The enforcement costs can be considered as an additional factor as justice may require.
6. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act. Accordingly, interested persons will be given thirty days to comment on any proposed settlement of this Complaint.

STATEMENT OF REGULATORY AUTHORITY

7. On May 2, 2006, the State Water Board adopted the General Order, which prescribes Statewide General Waste Discharge Requirements for Sanitary Sewer Systems. The General Order establishes minimum requirements to prevent SSOs from publicly owned and operated sanitary sewer systems. As owner and operator of a collection system, the Discharger is required to comply with the requirements of the General Order. The Discharger filed a Notice of Intent for coverage under the General Order with the Regional Water Board on October 9, 2006. The General Order became effective on January 2, 2007.
8. Prohibition C.1 of the General Order states that any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.
9. Section 301 of the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. § 1311) and CWC section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a NPDES permit. The WDRs serve as a NPDES Permit under the Federal Clean Water Act. The Regional Water Board adopted the WDRs on September 20, 2006, and they became effective on November 9, 2006.

10. The Regional Water Board adopted the WDRs on September 20, 2006. The WDRs became effective on November 9, 2006. The WDRs were subsequently modified by Order No. R1-2008-0091. Pursuant to 40 CFR Sections 124.5(c)(2) and 122.62, the conditions of the WDRs modified were specifically set forth in Order No. R1-2008-0091, and all other aspects of the WDRs remain in effect and unchanged.
11. The discharge prohibitions set forth in the WDRs include, but are not limited to, the following:
 - The discharge or reclamation of untreated or partially treated waste from anywhere within the collection, treatment, or disposal facility is prohibited. (Section III.D)
 - The discharge of waste at any point not authorized by the WDRs or any other State Water Board or Regional Water Board permit is prohibited. (Section III. G.)
 - The discharge of wastewater effluent from the System to the Russian River or its tributaries from May 15 through September 30 of each year is prohibited. (Section III. I)
12. Discharges of advanced treated wastewater are specifically regulated by Attachment G of the WDRs and state in part the following:

B. Water Reclamation Requirements

 6. Recycled water shall not be allowed to escape the recycled use area(s) in the form of surface runoff. [CCR Title 22, Section 60310(e)]
13. Attachment D–Federal Standard Provisions, Section I. G. of the WDRs sets forth “bypass” limitations and prohibitions with which the Discharger is required to comply. The WDRs define bypass as the intentional diversion of waste streams from any portion of a treatment facility (40 C.F.R. §122.41(m)(1)(i)). The Discharger may allow any bypass, which does not cause exceedances of effluent limitations, to occur; but only if it is for essential maintenance to assure efficient operation. Bypass is prohibited, and the Regional Water Board may take enforcement action against a Discharger for bypass (40 CFR §122.41(m)(4)(i)), unless:
 - Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage (40 CFR §122.41(m)(4)(A));
 - There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of

reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance (40 CFR §122.41(m)(4)(B)); and

- The Discharger submitted notice to the Regional Water Board as required in Attachment D, Section I. G. 5. (40 CFR §122.41(m)(4)(C)).
14. The WDRs also contain specifications for the processes to be used for treating wastewater that will be reclaimed for permitted uses. These specifications state that the filtration rate through the tertiary filters shall not exceed five gallons per minute per square foot of surface area or other filtration rates authorized in writing by the Executive Officer and under conditions recommended by the California Department of Public Health. (Section IV.C.1).¹
 15. Further, all NPDES permits must specify requirements for recording and reporting monitoring results. (40 C.F.R. § 122.48). CWC section 13383 authorizes the Regional Water Board to establish monitoring and reporting requirements. The WDRs require the Discharger to implement a discharge monitoring program and to prepare and submit timely monthly and annual NPDES self-monitoring reports to the Regional Water Board, which are designed to ensure compliance with effluent limitations contained in the WDRs.
 16. Attachment E, Provision VI B.1. of the WDRs states that “[t]he Discharger shall comply with the Monitoring and Reporting Program, and future revisions thereto, in Attachment E of this Order.” Attachment E sets forth, in part, the following effluent monitoring requirements:
 - At monitoring location M-001, at the end of the treatment process, the Discharger shall monitor treated effluent as follows:

Parameter	Units	Sample Type	Minimum Sampling Frequency	Required Analytical Test Method
BOD (5-day @ 20°C)	mg/L	24-hour Composite	Twice Weekly	Standard Methods
Total Suspended Solids	mg/L	24-hour Composite	Daily	Standard Methods
Hydrogen Ion	pH	Grab	Daily	Standard Methods
Total Coliform Organisms	MPN/ 100 mL	Grab	Daily	Standard Methods
Mercury	µg/L	Grab	Weekly	USEPA Method 1631E
CTR Priority Pollutants ²	µg/L	24-hour Composite	Quarterly	See Footnote [2]
Mean Daily Flow	mgd	Continuous	Daily	meter

¹ By letter dated May 5, 2009, the Regional Water Board Executive Officer changed the filtration rate to 7.5 gpm/ft² for a period of one year beginning on June 1, 2009.

² For priority pollutants, the methods must meet the lowest minimum level (ML) specified in Attachment 4 of the State Implementation Policy (SIP). In accordance with Section 2.4 of the SIP, the Discharger shall report the ML and the [method detection limits] MDL for each sample result. Where no methods are specified for a given pollutant, the Discharger shall use methods approved by the Regional Water Board. The Laboratory’s current MDL shall be determined by the procedure found in 40 CFR 136 (revised as of May 14, 1999).

- At monitoring locations M-001 to M-013, the Discharger shall monitor all treated effluent, when discharging to surface waters, as follows:

Parameter	Units	Sample Type	Minimum Sampling Frequency	Required Test Method
BOD (5-day @ 20°C)	mg/L	Grab	Weekly	Standard Methods
Total Suspended Solids	mg/L	Grab	Weekly	Standard Methods
Hydrogen Ion	pH	Continuous	Weekly	Standard Methods
Dissolved Oxygen	mg/L	Continuous	Weekly	Standard Methods
Turbidity	NTU	Continuous	Weekly	Standard Methods
Temperature	°C	Continuous	Weekly	Standard Methods
Specific Conductivity	µmhos/cm	Continuous	Weekly	Standard Methods
Ammonia Nitrogen	mg/L	Grab	Weekly	Standard Methods
Unionized Ammonia	mg/L	Grab	Weekly	Calculation
Nitrate Nitrogen	mg/L	Grab	Weekly	Standard Methods
Organic Nitrogen	mg/L	Grab	Weekly	Standard Methods
Total Phosphorus	mg/L	Grab	Weekly	Standard Methods
Copper	µg/L	Grab	Weekly	USEPA Method 200.8
Lead	µg/L	Grab	Weekly	USEPA Method 200.8
Nickel	µg/L	Grab	Weekly	USEPA Method 200.8
Cyanide	µg/L	Grab	Weekly	USEPA Method 335.4
Mercury	µg/L	Grab	Weekly	USEPA Method 1316B
Hardness (as CaCO ₃)	mg/L	Grab	Weekly	Standard Methods
Total Dissolved Solids	mg/L	Grab	Weekly	Standard Methods
Total Chlorine Residual	mg/L	Grab	Weekly	Standard Methods
Acute Toxicity Bioassay	% Survival	Grab	Monthly	See Section V.A
bis (2-ethylhexyl) phthalate	µg/L	Grab	Weekly	USEPA Method 625
Beta-BCH	µg/L	Grab	Monthly	USEPA Method 608
gamma-BCH (lindane)	µg/L	Grab	Monthly	USEPA Method 608

17. Effluent Limitations set forth in the WDRs and Order No. 2008-0091 include, but are not limited to the following:
- b. **Disinfection:** The disinfected effluent, sampled in each of the three effluent discharge channels, shall not contain concentrations of total coliform bacteria exceeding the following concentrations:
 - i. The median concentration of the discharge channels shall not exceed a Most Probable Number (MPN) of 2.2 per 100 milliliters, using the bacteriological results of the last seven days for which analyses have been completed. (Order No. R1-2008-091).
 - ii. The number of coliform bacteria shall not exceed an MPN of 23 per 100 milliliters in more than one sample in any 30-day period. (WDRs).
 - iii. No sample shall exceed an MPN of 240 total coliform bacteria per 100 milliliters. (WDRs).

STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED

18. An administrative civil liability may be imposed pursuant to the procedures described in CWC section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
19. Pursuant to CWC section 13385(a), any person who violates CWC section 13376, any waste discharge requirements issued pursuant to Chapter 5.5 of the Porter-Cologne Water Quality Control Act (Compliance with the Provisions of the Clean Water Act), any requirements established pursuant to CWC section 13383, or any requirements of section 301 of the Clean Water Act is subject to administrative civil liability pursuant to CWC section 13385(c).
20. CWC section 13385(c), provides for the imposition of civil liability by the Regional Water Board in an amount not to exceed the sum of both of the following: (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
21. CWC section 13385, subdivision (h)(1), requires the Regional Water Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation. Pursuant to CWC section 13385, subdivision (h)(2) a "serious violation" is defined as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or more. Appendix A of Part 123.45 of Title 40 of the Code of Federal Regulations specifies Group I and II pollutants.
22. CWC section 13385, subdivision (i)(1), requires the Regional Water Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation whenever the permittee does any of the following four or more times in any six-month period:
 - (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 discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

The requirement to assess a mandatory minimum penalty pursuant to CWC section 13385, subdivision (i)(1) shall not be applicable to the first three violations within that six-month time period.

ALLEGED VIOLATIONS

SSOs Reported by the Discharger:

23. Between January 1, 2007 and February 28, 2010, the Discharger reported three discharges of untreated wastewater from its wastewater collection system (SSOs) that violate the General Order, the General WDRs, section 301 of the Clean Water Act, and CWC section 13376, as the discharges reached tributaries of the Russian River, a water of the United States. These discharges are summarized in Table 1 below:

Table 1

Date (month/day/ year)	Location	Volume Discharged (gallons)	Volume Recovered (gallons)	Volume to Receiving Waters (gallons)	SSO Cause	Maximum Potential Civil Liability (CWC § 13385(c))
6/8/2007	976 Sonoma Ave.	23	20	3 (Santa Rosa Creek)	FOG ³	\$10,000
1/4/2008	317 Greenfield Cir.	1,860	0	1,860 (Oakmont Creek)	FOG	\$18,600
1/4/2008	1520 Ridley Ave.	1,400	0	1,400 (College Creek)	FOG/ Roots	\$14,000
TOTAL \$						\$42,600

Discharges of Advanced-Treated Water

24. Between January 1, 2007 and February 28, 2010, the Discharger reported nine discharges of advanced-treated water from its reclamation system that discharged to tributaries of the Russian River in violation of Section III G. and III.I of the General WDRs, section 301 of the Clean Water Act, and CWC section 13376. These discharges are summarized in Table 2 below:

Table 2

Date (month/ day/year)	Location	Volume Discharged (gallons)	Volume to Receiving Water (gallons)	Receiving Water	Maximum Potential Civil Liability (CWC § 13385(c))
7/5/2007	Countryside Estates	720	720	Santa Rosa Creek	\$10,000

³ Blockage caused by Fats, Oils, and Grease

Date (month/day/year)	Location	Volume Discharged (gallons)	Volume to Receiving Water (gallons)	Receiving Water	Maximum Potential Civil Liability (CWC § 13385(c))
8/24/2007	Rancho Cotati High School	3,500	3,500	Colgan Creek	\$35,000
9/24/2007	Ambrosini Property	1,650	1,650	Santa Rosa Creek	\$16,500
6/10/2008	Todd Road System	4,500	4,500	Laguna de Santa Rosa	\$45,000
7/18/2008	Arlington Line ARV	8,600	8,600	Colgan Creek	\$86,000
7/16/2009	Sonoma State University	15,000	15,000	Copeland Creek	\$150,000
12/14/209	Christenson South	180,000	140,000	Irwin Creek	1,400,000
Total					\$1,820,500

Bypass of Treatment Plant Processes

25. During the period between January 1, 2007 and February 28, 2010, the Discharger reported two bypasses of treatment processes in violation of Attachment D, Section I. G. of the WDRs, as described in Table 3 below. The discharges did not cause an effluent violation.

Table 3

Date (month/day/year)	Volume (gallons)	Description	Maximum Potential Civil Liability (CWC § 13385(c))
12/4/2008	900	Filter cell bypass, effluent valve failed to close	\$10,000
12/12/2008	2,700	Filter cell bypass, effluent valve failed to close	\$10,000
TOTAL \$			\$20,000

Reclamation Specifications:

26. During the period between January 1, 2007 and February 28, 2010, the Discharger reported that it exceeded the specified filtration rate in violation of Section IV.C.1 of the WDRs on three occasions, as shown in Table 4 below:

Table 4

Date (month/day/year)	Limit	Reported Value	Volume, Gallons	Maximum Potential Civil Liability (CWC § 13385(c))
2/24/2007	5.0 gpm/sqft ⁴	5.8 gpm/sq ft	833,500	\$10,000
1/4/2008	5.0 gpm/sqft	5.6 gpm/sq ft	200,000	\$10,000
1/26/2008	5.0 gpm/sqft	5.5 gpm/sq ft	4,500,000	\$10,000
TOTAL \$				\$30,000

⁴ Gallons per minute per square foot

Monitoring and Reporting Incidents

27. During the period between January 1, 2007 and February 28, 2010, the Discharger reported 22 incidents of equipment failure or operator error that resulted in missed monitoring events in violation of the MRP of the WDRs, as shown in Table 5 below:

Table 5

Date	Number of Days	Description	Maximum Potential Civil Liability (CWC § 13385(c))
1/2007	1	Weekly monitoring for Mercury not performed	\$10,000
1/19/2007	1	Monitoring for TSS not performed at 12B ⁵	\$10,000
1/2007	3	Continuous turbidity monitoring not performed at 12B	\$30,000
1/2007	3	Continuous O ₂ monitoring not performed at 12B	\$30,000
1/2007	3	Continuous pH monitoring not performed at 12B	\$30,000
1/2007	3	Continuous temperature monitoring not performed at 12B	\$30,000
1/2007	3	Continuous Spec. Cond. monitoring not performed at 12B	\$30,000
2/2007	1	Continuous turbidity monitoring not performed at 12B	\$10,000
2/2007	1	Continuous O ₂ monitoring not performed at 12B	\$10,000
2/2007	1	Continuous pH monitoring not performed at 12B	\$10,000
2/2007	1	Continuous temperature monitoring not performed at 12B	\$10,000
2/2007	1	Continuous spec. cond. not performed at 12B	\$10,000
3/2007	6	Continuous O ₂ monitoring not performed at 12B	\$60,000
11/2007	1	Weekly mercury monitoring not performed (plant effluent)	\$10,000
3/27/2008	1	Daily TSS monitoring not performed (plant effluent)	\$10,000
3/30/2008	1	Daily TSS monitoring not performed (plant effluent)	\$10,000

⁵ 12B- Delta Pond discharge to the confluence of the Laguna de Santa Rosa and Santa Rosa Creek

Date	Number of Days	Description	Maximum Potential Civil Liability (CWC § 13385(c))
7/21/2008	1	Daily Coliform monitoring not performed (plant effluent)	\$10,000
8/30 through 12/31/2008	124	No measurement of effluent flow. Meter failed	\$1,240,000
8/30 through 12/31/2008	124	Flow proportional composite samples not collected	\$1,240,000
3 rd quarter 2008	1	Simultaneous monitoring for priority pollutants not performed	\$10,000
10/3/2008	59	2 nd quarter reclamation report late	\$590,000
Total			\$3,410,000

Effluent Limitation Violations, Mandatory Minimum Penalties

28. Between January 1, 2007 and February 28, 2010, the Discharger reported one serious violations and one chronic violation of effluent limits for total coliform, as summarized in Table 6 below.

Table 6

Date month/day/year	Limit, MPN/100 milliliters ⁶	Reported Value	Comments	Mandatory Minimum Penalty
1/15/2010	240	<1600	Serious	\$3,000
1/22/2010	240	300	1st chronic	\$0
TOTAL				\$3,000

CONSIDERATION OF CWC SECTION 13385(e) FACTORS

29. Pursuant to CWC section 13385, subdivision (e), in determining the amount of any civil liability imposed under CWC section 13385(c), the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require. CWC section 13385, subdivision (e) also requires that at a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation(s). The Regional Water Board is not required to consider these factors prior to the imposition of penalties under CWC section 13385, subsections (h) and (i).

⁶ Most Probable Number per 100 milliliters of wastewater

Nature, Circumstances, Extent and Gravity of the Violations

SSOs:

30. The Discharger reported three SSOs that were not fully-recovered, and discharged to surface waters during the review period from January 1, 2007 through February 28, 2010. Two of the reported SSOs exceeded 1,000 gallons. The Greenfield Street SSO discharged to Oakmont Creek and was caused by a grease buildup and high flows due to a storm. The Ridley Avenue spill discharged to College Creek and was caused by root intrusion and high storm flows. The Sonoma Avenue spill discharged to Santa Rosa Creek and was caused by a grease buildup. All three discharges consisted of raw sewage diluted by storm water, which contains high levels of suspended solids, pathogenic organisms, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants that have the potential to adversely impact aquatic organisms and public health. Oakmont Creek, College Creek and Santa Rosa Creek are tributaries of the Russian River, a water of the United States.

Spills of Advance-Treated Water:

31. The Discharger reported nine discharges of advance-treated water. All discharges entered waters of the United States. Eight discharges occurred during the summer discharge-prohibition period. One occurred in February of 2009 in violation of reclamation requirements contained in attachment G of the WDRs (Finding 11). The volumes of the discharges ranged from 720 gallons to 140,000 gallons. Advance-treated water is highly-treated and disinfected using ultraviolet light. The uncontrolled discharges have the potential to discharge harmful quantities of soil eroded by overland flow. Discharges to creeks in the summer have the potential to adversely impact beneficial uses such as aquatic life not adapted to high pulse flows during the low flow season. No information is available regarding any impacts that may have been caused by these discharges.

Bypass of Treatment Plant Processes:

32. The two bypasses reported by the Discharger were of short duration because of the quick response from the operators, were the result of equipment failure, and did not result in violations of effluent limits.

Reclamation Specifications:

33. The filter application-rate violations were the result of high, wet-weather flow conditions in the treatment plant. The excess loading of the filters did not result in violations of effluent limits. Additionally, the loading rates are being re-evaluated by the Department of Health Services. Preliminary data shows that loading rates as high as 7.5 gpm/ft² may meet the Title 22 limits for turbidity and virus removal. By letter dated May 5, 2009 the Regional Water Board Executive Officer changed the filtration rate to 7.5 gpm/ft² for a period of one year beginning on June 1, 2009.

This change is authorized pursuant to Section IV.C.1 of the WDRs. A permanent change may be granted following an additional study under Phase II of the Filter Loading Evaluation for Water Reuse sponsored in part by the National Water Research Institute and the Water Reuse Foundation.

Monitoring and Reporting:

34. During the review period from January 1, 2007 through February 28, 2010, 22 incidents of operator error or equipment failure resulted in missed monitoring events. All but nine incidents did not result in a significant loss of data. During three days in January 2007, the Discharger failed to perform continuous monitoring of turbidity, dissolved oxygen, pH, and temperature. For six days in March 2007, the Discharger failed to perform continuous monitoring of dissolved oxygen (DO) while discharging to Santa Rosa Creek, a tributary to the Laguna de Santa Rosa, which is a tributary of the Russian River. Dissolved oxygen is an important parameter for aquatic organism survival. The discharge is not allowed to depress the receiving water DO below 7 mg/l. Without reliable monitoring there is no way to know if the receiving waters are being protected.
35. On August 30 2008, the effluent flow meter failed. As a result, no measurement of effluent flow occurred for 124 days, which also prevented the collection of flow-proportioned samples as required by the monitoring program.

Susceptibility to Cleanup, Cleanup Activities Taken, and Toxicity of the Discharge

SSOs:

36. The Greenfield Circle SSO and the Ridley Avenue SSO occurred during high-flow periods and clean up was not possible. The Discharger managed to contain and prevent all but three gallons of the Sonoma Avenue SSO from reaching surface waters. The toxicity of the discharged sewage is not specifically known; however, raw sewage is generally toxic to aquatic organism unless highly diluted.
37. Raw, undiluted sewage, as compared to treated and/or diluted wastewater, typically has about ten times the concentrations of biochemical oxygen demand, trash, total suspended solids, oil and grease, ammonia, and thousands of times the levels of viruses and bacteria. These pollutants exert varying levels of impact on water quality, and, as such, will adversely affect beneficial uses of receiving waters to different extents. Some possible adverse effects on water quality and beneficial uses as a result of an SSO include:
 - Adverse impact to fish and other aquatic biota caused by bio-solid deposition, oil and grease, and toxic pollutants common in sewage (such as heavy metals, pesticides, personal care products, and pharmaceuticals);
 - Creation of a localized toxic environment in the water column as a result of the discharge of oxygen-demanding pollutants that lower dissolved oxygen, and elevated ammonia concentration which is a demonstrated fish toxicant; and

- Impairment to water contact recreation and noncontact water recreation and harm to fish and wildlife as a result of elevated bacteria levels including pathogens.

38. At the time that the Greenfield Circle SSO and the Ridley Avenue SSO occurred, the water flow of the two creeks affected was high, which probably mitigated the inherent toxicity of raw sewage.

Spills of Advanced-Treated Water:

39. The nine discharges that occurred were not susceptible to cleanup. By the time they were discovered, the discharges had already occurred and entered waters of the United States. No ground cleanup activities were necessary because the advanced-treated water was highly-treated and disinfected. It is unlikely that the discharges were toxic; however, any nutrient additions specifically impact the Laguna de Santa Rosa, a significant tributary/wetland of the Russian River, which is already impaired for nutrients. The most serious impacts would result from the discharge of eroded soil and addition of nutrients caused by the uncontrolled discharge as well as impacts from temporary high flows. There is no direct evidence significant impacts occurred.

Bypass of Treatment Plant Processes:

40. The bypasses were not susceptible to cleanup and did not cause a toxic condition in the effluent. The bypasses did not impact effluent quality which according to toxicity tests continuously meets permit limits.

Reclamation Specifications:

41. The violation of the filter application rate was not susceptible to cleanup and did not cause a toxic condition in the effluent. The application rate limit is set on an internal treatment process. In this instance, violation of the limit did not appear to impact effluent quality.

Monitoring and Reporting Incidents:

42. Incomplete monitoring reports and late submittals are serious violations. The loss of monitoring data as a result of the flow meter failure is serious because the limits contained in the MRP and WDRs are based on flow proportional sampling of the effluent. In this instance, the untimely replacement of the flow meter was beyond the control of the Discharger. The 54-inch magnetic flow meter had to be custom made specifically for the treatment plant. It was installed during the week of April 13, 2009 and was calibrated during the week of May 4, 2009. The installation and calibration were performed timely.

43. Cleanup and toxicity are not issues related to monitoring. The Discharger performed all required toxicity tests.

Culpability and Prior History of Violations

44. As the owner and operator of the System, the Discharger is fully responsible for the violations alleged in this Complaint. Administrative Civil Liability Complaints have been issued to the Discharger in 2000, 2002, 2004, 2006, and 2007 for violations occurring at the System. The Regional Water Board routinely reviews discharges from the Discharger approximately every two years. In comparison to the size and complexity of the Discharger's System, the prior violations resulted in minor impact to water quality. Overall, the System is well operated and maintained and has a high level of compliance with its permit limits.

Ability to Pay and Effect on Ability to Continue its Business

45. Based on information obtained from the Discharger, the budget for the Subregional wastewater facilities operations for 2009-2010 is in excess of \$27,000,000. The Discharger has the ability to pay the penalty and continue to provide its services. In addition, the Discharger has the authority to adjust its sewer rates to provide for financial needs. The penalty contained in this Complaint is a miniscule fraction of the operating budget.

Economic Benefit to Discharger

46. As stated above, the Discharger's history and pattern of violations indicates that the Discharger is maintaining its system adequately and has a good response program to deal with unauthorized discharge events. Further, the violations history does not suggest that the Discharger is deferring necessary costs for operation and maintenance nor otherwise deriving an economic benefit from the acts that constituted the violation. Additionally, the Discharger timely replaced the 54-inch magnetic flow meter that failed and resulted in no measurement of effluent flow, which also prevented the collection of flow proportioned samples as required by the monitoring program. However, the Discharger received an economic benefit for the monitoring costs it saved from missing monitoring events due to equipment failure or operator error.

Other Matters as Justice May Require

47. Regional Water Board and State Water Board staff costs associated with this enforcement action are estimated to be a minimum of \$9,750. This amount is calculated based on an averaged hourly wage of \$150 multiplied by 65 hours of staff time, which includes time to review and tally violations, and prepare this Complaint and the accompanying public notices. If this matter proceeds to hearing, the Regional Water Board Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

MAXIMUM AND PROPOSED CIVIL LIABILITY

48. After consideration of the above factors, the Assistant Executive Officer proposes civil liability be imposed on the Dischargers in the amount of \$72,750:

SSOs (Finding 22):

49. The maximum penalty for the three SSOs reported by the Discharger is \$42,600. The proposed penalty for these discharges is \$20,000.

Discharges of Advanced-Treated Water (Finding 23):

50. The maximum statutory penalty for these spills is \$1,820,500. The proposed penalty for these discharges is \$15,000.

Bypass of Treatment Plant Processes (Finding 24):

51. The maximum statutory penalty for these violations is \$20,000. No penalty is proposed for these violations.

Reclamation Specifications (Finding 25):

52. The maximum statutory penalty for these violations is \$30,000. No penalty is proposed for these violations.

Monitoring and Reporting Incidents (Finding 26):

53. The maximum statutory penalty for these violations is \$3,410,000. Events beyond the Discharger's control caused a long delay in replacing the flow meter. Consequently no penalty is proposed for the violations related to the failed flow meter. A penalty of \$25,000 is assessed for the late second quarter reclamation report and lack of effluent monitoring at discharge point 12B and the plant effluent.

Effluent Limitation Violations, Mandatory Minimum Penalties (Finding 27):

54. The mandatory minimum penalty is \$3,000.

Staff Costs:

55. Staff costs for the preparation, follow-up, and settlement of this Complaint are estimated to be \$9,750.
56. The total maximum potential penalty is \$3,285,600. However, based on the above factors, the Assistant Executive Officer of the Regional Water Board is issuing this Complaint for \$72,750 to the Discharger for violations of Waste Discharge Requirements (WDRs) Order No.R1-2006-0045 and Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Order No. 2006-0003-DWQ

that occurred between January 1, 2007 and February 28, 2010. Table 7 below summarizes the proposed penalty.

Table 7

Mandatory Minimum Penalties	\$3,000
Discharge Prohibitions (SSOs)	\$20,000
Spills of Recycled Water	\$15,000
Bypass of Treatment Plant Processes	\$0
Reclamation Specifications	\$0
Monitoring and Reporting	\$25,000
Staff Costs	\$9,750
Total	\$72,750

57. Notwithstanding the issuance of this Complaint, the Regional Water Board shall retain the authority to assess additional penalties for violations of the Discharger's WDRs.

CEQA EXEMPTION

58. The issuance of this Complaint is an enforcement action to protect the environment, and is therefore exempt from provisions of the California Environmental Quality Act (Public Resources Code sections 21000 et seq.) pursuant to title 14, California Code of Regulations, sections 15308 and 15321, subsection (a)(2).

Luis G. Rivera
Assistant Executive Officer

May 26, 2010