

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2010-0081
For Violation of
State Water Resources Control Board Order No. 2006-0003-DWQ

In the Matter of
City of Sebastopol
Waste Water Collection System
WDID No. 1B76176OSON

Sonoma County

THE CITY OF SEBASTOPOL IS HEREBY GIVEN NOTICE THAT:

1. The City of Sebastopol (Discharger) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) may impose civil liability pursuant to Section 13350 of the California Water Code (CWC).
2. This Administrative Civil Liability (ACL) Complaint is issued under authority of CWC Section 13323.
3. The Discharger owns and operates a sewage collection system that discharges to the City of Santa Rosa's sub-regional wastewater treatment plant. The Discharger is required to operate and maintain its sewage collection system to prevent sanitary sewer overflows (SSOs) and spills in compliance with State Water Board Order No. 2006-003-DWQ. *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* (GWDRs).
4. Prohibition C.1 of the GWDRs states that any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.
5. 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.
6. Pursuant to CWC Section 13350(a), any person or entity who, in violation of any Waste Discharge Requirements issued by the State Water Board, discharges waste, or causes or permits waste to be deposited where it is discharged, into waters of the state, is subject to administrative civil liability pursuant to CWC Section 13350(e), either (1) on a daily basis not to exceed five thousand dollars (\$5,000) for each day the violation occurs; or (2) on a per gallon basis in an amount not to exceed ten dollars (\$10) per gallon of waste discharged.

ALLEGATIONS

7. The Discharger violated Provision C.1 of the GWDRs on January 20, 2010 by discharging 142,500 gallons of untreated wastewater (raw sewage) to the Laguna de Santa Rosa, a water of the United States, for which liability may be imposed pursuant to CWC Section 13350. The circumstances of the discharge were as follows:
 - a. On January 20, 2010, at 11:37 a.m., the Discharger received a report of water surfacing and flowing in Meadowlark Field, east of the Laguna de Santa Rosa, and north of Highway 12.
 - b. Following notification of the spill, the Discharger alerted its Public Works and Engineering staff and contacted its consulting engineer, and requested that they respond to the scene. All appropriate agencies were notified within the hour including the Regional Water Board, County Environmental Health and downstream water users. Pumper trucks were mobilized to collect wastewater and haul it to the treatment and disposal system. The spill was fully contained about 10 hours after the Discharger learned of the overflow.
 - c. The Discharger determined that the spill had originated from a portion of the pressurized sewer main which conveys wastewater from the Discharger's sanitary sewer collection system to the City of Santa Rosa's Laguna Treatment Plant and was caused by the failure at a joint between two pipes of differing sizes.
 - d. The pipe joint which caused the spill had been replaced in 2008 as part of the Discharger's Laguna Force Main Replacement Project.
 - e. The approved plans for the Discharger's Laguna Force Main Replacement Project show a system of restrainers and tie rods to prevent the pipe sections from separating during pressure variations when pumping. A change proposal approved by the Discharger's engineer detailed an alternate method of restraint.
 - f. The Discharger's spill report for this incident, submitted to the Regional Water Board on March 18, 2010, says that "The particular joint in question, however, was not constructed according to the plans and the RFI, and subsequently failed." As originally constructed, a critical component of the joint was not installed, resulting in the failure.

PROPOSED LIABILITY DETERMINATION

8. Pursuant to CWC Section 13327, in determining the amount of any civil liability imposed under CWC Section 13350, the Regional Water Board is required to take into account the nature, circumstances, 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 that justice may require.

9. On November 17, 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in CWC section 13327.

The policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

The spill event liability has been considered using the methodology in the Enforcement Policy, as explained in detail below:

DETERMINATION OF INITIAL LIABILITY

Per Gallon Determination:

The Potential for harm is eight (8). This is determined by the sum of the factors for a) the potential for harm to beneficial uses (above moderate - 4); b) the physical, chemical, biological or thermal characteristics of the discharge (above moderate - 3); and the susceptibility for cleanup or abatement (less than 50% of discharge is susceptible to cleanup - 1). This was determined based on the following:

Raw sewage 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. Increased nutrients cause increased algal and macrophyte growth, increased turbidity, larger dissolved oxygen swings, and potential for increased sediment oxygen demand (SOD), all of which reduce the cold and warm water fish and aquatic life survival rates, and therefore impact many of the fisheries aquatic habitat beneficial uses. Nutrient and pathogen discharges specifically impact the Laguna de Santa Rosa, which is already listed on the Clean Water Act Section 303(d) list as impaired for nutrients, low dissolved oxygen, and pathogens/indicator bacteria.

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. The toxicity of the discharged sewage is not specifically known; however, raw sewage is generally toxic to aquatic organisms unless highly diluted. 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.

The deviation from requirements is major. This was determined based on the following: The requirement contained in the GWDRs prohibits the discharge of untreated or partially treated wastewater to waters of the United States. The requirement was rendered entirely ineffective given that there was a discharge of untreated wastewater to a water of the United States.

Considering that the discharge was a large volume sewage spill, consistent with the direction in the Enforcement Policy regarding "high volume discharges," a maximum per gallon assessment of \$4.50 is appropriate. (A lesser per gallon assessment would have resulted in an inappropriately small penalty, given that the discharge was caused by an improperly installed pipe joint and resulted in an impact to beneficial uses). Liability is assessed on a discharge of 142,500 gallons. Therefore, the initial amount of liability based on the volume discharged is \$384,750.

Per Day Determination:

Based on the facts in this case, a per day assessment for the discharge is not appropriate because CWC Section 13350 allows for the imposition of civil liability on a per gallon basis or a per day basis, not both.

ADJUSTMENTS TO DETERMINATION OF INITIAL LIABILITY

The Discharger's culpability factor is 1.3. The spill was caused by the apparent negligence of this Discharger's contractor by installing a pipe joint that was not in accordance with the direction given by the Discharger's engineer.

The Discharger's cleanup and cooperation factor is .75. This value is based on the following: The Discharger rapidly responded to the spill event and mobilized a team to quickly repair the failed pipe. While no cleanup was possible, the Discharger mobilized a fleet of pump trucks to minimize the discharge and eventually contain it until the repair was completed. About 10 hours elapsed between the Discharger becoming aware of the spill and completion of repairs.

Further, the pipeline that failed because of a faulty joint had been installed as part of a project to replace an old failure-prone line constructed of inferior materials. The intent was to prevent future discharges by construction of the new line. The replacement was not required by regulatory agencies but was completed as part of ongoing infrastructure improvements undertaken by the Discharger.

The Discharger's history of violations factor is 1. This value is based on the following: The past violations incurred by the Discharger have been minor in nature and are Class II violations under the revised enforcement policy.

Based on these adjustments, the amount revised from the initial liability is \$390,131 (Initial liability x culpability factor x cleanup and cooperation factor x history of violations factor) for this violation.

TOTAL BASE LIABILITY AMOUNT

The revised initial liability for the violation represents the total base liability amount of \$390,131.

ABILITY TO PAY AND ABILITY TO CONTINUE IN BUSINESS

The Discharger has the ability to pay the total base liability amount based on the following information: The Discharger contracted with North Bay Construction Inc. to carry out the Laguna Force Main Replacement Project (Contract No. 2008-02). Section 125-1.01 of the contract between the Discharger and North Bay Construction Inc. provides that "The Contractor shall be responsible for the payment of any fines, penalties or levies resulting from the Contractor's violation of any permit or easement on the project. The Contractor shall be responsible for the payment of any fines, penalties or levies resulting from the Contractor's violation of any environmental permit or any local, state, or federal authority's environmental regulations."

In addition, Section 7.4 of the contract between the Discharger and North Bay Construction Inc. provides that the Contractor shall maintain no less than \$5,000,000 in general liability insurance, with the Discharger as a named additional insured with respect to liability "arising out of work or operations performed by or on behalf of the Contractor..."

Based on this information, the total base liability amount is not adjusted.

OTHER FACTORS AS JUSTICE MAY REQUIRE

Costs of Investigation and Enforcement:

As of the date of the issuance of this Complaint, Enforcement staff has incurred costs of investigation and enforcement in the amount of \$15,525. Including the initial response to the spill and subsequent work the Regional Water Board prosecution, staff spent an estimated 115 hours to prepare this Complaint and supporting evidence. Based on an average staff cost of \$135 per hour the total staff cost is \$15,525. 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.

Other Factors:

There are no additional considerations that warrant further adjustment of the liability amount for the violation at issue.

ECONOMIC BENEFIT

The economic benefit estimated for the violation at issue is \$0. The economic benefit was determined as follows: The Discharge did not benefit economically from the spill. Instead, mobilization of Discharger staff and a consulting engineer to direct the cleanup, associated community notifications and water quality sampling and analysis has resulted in a significant cost.

The Enforcement Policy requires that the adjusted Total Base Liability Amount be at least 10% higher than the economic benefit amount. Therefore, the liability should not be adjusted.

MAXIMUM AND MINIMUM LIABILITY AMOUNTS

The maximum liability provided for by statute is \$1,425,000 and the minimum liability amount is \$0.

The Enforcement Policy requires that the discretionary administrative civil liability must not exceed the maximum liability amount nor be less than the minimum liability amount. Therefore the proposed liability should not be adjusted.

FINAL LIABILITY AMOUNT

Based on the foregoing analysis, and consistent with the Enforcement Policy, the proposed administrative civil liability is \$390,131. Exhibit A is a spreadsheet which demonstrates the use of the penalty calculation methodology.

TOTAL PROPOSED CIVIL LIABILITY:

1. The total maximum potential penalty is \$1,425,000. Based on the above considerations, the Assistant Executive Officer of the Regional Water Board is issuing this Complaint for \$390,131 to the Discharger for violations of the GWDRs that occurred on January 20, 2010.
2. 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

September 9, 2010