

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Order No. R1-2011-0005

For

Violation of Water Reclamation Requirements
Order No. 88-52

In the Matter of
City of Santa Rosa
Oakmont Wastewater Treatment Facility
WDID No. 1B78209SON

Sonoma County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), has received from the City of Santa Rosa (hereinafter Discharger), a waiver of the right to a public hearing in the matter of civil penalties issued pursuant to California Water Code section 13385, for Administrative Civil Liability Complaint No. R1-2009-0046 (Complaint). The proposed civil penalties issued are for discharges of wastewater in violation of Waste Discharge Requirements (WDRs) Order No. 88-52 that occurred in 2006 and 2008. The Regional Water Board finds the following:

1. The Discharger owns and operates the Oakmont Wastewater Treatment Facility (WWTF). The facility serves the Oakmont Subdivision and has a design capacity of 65,000 gallons per day. During the summer months, the secondary-treated filtered and disinfected municipal waste water effluent from the WWTF is used to irrigate the Oakmont Golf Course. When recycled water supply exceeds golf course demand, tertiary treated effluent overflows the irrigation storage pond and is diverted to a sanitary sewer trunk line leading to the Santa Rosa Subregional Water Reclamation Facility (SWRF). Fully or partially treated effluent is also diverted to the SWRF during the winter months and all other times when the effluent does not meet effluent limits.
2. On May 7, 2009, the Assistant Executive Officer issued the Complaint assessing a civil liability penalty of \$65,300 for violations of the WDR Order. By letter dated June 2, 2009, the Discharger waived its right to a public hearing within 90 days and in a letter dated June 4, 2009 requested a lower penalty of \$25,000 based on the State Water Board's draft penalty calculator. Following settlement discussions the penalty was reduced to \$40,300. The Discharger agreed to pay \$20,800 to the State Water Pollution Cleanup and Abatement Account (CAA) and fund a Supplemental Environmental Project (SEP) with a total value of \$19,500. Payment to the CAA was made on June 15, 2010 and the SEP is ongoing.
3. Discharges of waste, including trash and human waste are occurring at three locations in the upper reaches of Santa Rosa Creek. The discharges are caused by encampments under bridges at Stony Point Road, Pierson Street and Montgomery

Drive. The proposed SEP will modify the structures under the bridges to prevent encampments and the associated discharges of waste to Santa Rosa Creek. Attachment A, incorporated herein, includes a description of the proposed SEP.

a. Definitions for the SEP:

- i. "Cleanup and Abatement Account" – the State Water Pollution Cleanup and Abatement Account.
- ii. "Designated Regional Water Board Representative" – the representative from the Regional Water Quality Control Board responsible for oversight of the supplemental environmental project (SEP).
- iii. "Enforcement Coordinator" - the person on the Regional Water Quality Control Board staff who is responsible for enforcement coordination.
- iv. "SEP Completion Date" – the date on which the SEP will be completed in its entirety.

b. As a material consideration for the Regional Water Board's acceptance of this Order, the Discharger represents that it will utilize the funds outlined in Attachment A, to implement the SEP in accordance with its budget and timeline. The Discharger understands that its promise to implement the SEP, in its entirety and in accordance with the schedule for implementation, is a material condition of this settlement of liability between the Discharger and the Prosecution Team.

c. The Discharger has represented that: 1) it will spend the SEP amount as described in this Order; 2) it will be required to submit a certified, written report to the Regional Water Board consistent with the terms of this Order detailing the implementation of the SEP, and 3) within 30 days of the completion of the SEP, it will provide written certification, under penalty of perjury under the laws of the state of California, that the Discharger followed all applicable environmental laws and regulations in implementing the SEP. The Discharger agrees that the Regional Water Board has the right to require an audit of the funds expended by it to implement the SEP.

d. Whenever the Discharger or its agents or subcontractors publicizes one or more elements of the SEP, they shall state in a **prominent manner** that the project is being undertaken as part of the settlement of an enforcement action by the Regional Water Board against the Discharger.

e. On or before January 31, 2011, the Discharger shall submit a report, under penalty of perjury under the laws of the state of California, stating that the SEP has been completed in accordance with the terms of this Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the SEP and the costs incurred by the Discharger.

f. On or before January 31, 2011, the Discharger shall submit a certified statement by a responsible official representing the Discharger documenting the

expenditures by the Discharger during the completion period for the SEP. The expenditures may be external payments to outside vendors or contractors implementing the SEP. The Discharger shall provide any additional information requested by the Regional Water Board staff that is reasonably necessary to verify the Discharger's SEP expenditures. The certification need not address any costs incurred by the Regional Water Board for oversight.

- g. In addition to the certification in Paragraph 3.f., upon completion of the SEP and at the discretion of the Designated Regional Water Board Representative, the Discharger, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff providing such party(ies)'s professional opinion that the Discharger has expended money in the amounts claimed by the Discharger. Such information shall be provided to the Regional Water Board within three (3) months of the completion of the Discharger's SEP obligations. The audit need not address any costs incurred by the Regional Water Board for oversight.
- h. Upon the Discharger's satisfaction of its obligations under this Order, the completion of the SEP and any audits, the Designated Regional Water Board Representative, with notice to the regional Enforcement Coordinator, shall request that the Regional Water Board issue a "Satisfaction of Order." The issuance of the Satisfaction of Order shall terminate any further obligations of the Discharger under this Order.
- i. In the event that Discharger is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that it has spent the entire SEP Amount for the completed SEP, the Discharger shall either 1) undertake an additional SEP acceptable to the Regional Water Board; or 2) pay the difference between the Suspended Administrative Civil Liability and the amount the Discharger can demonstrate it actually spent on the SEP, as an administrative civil liability. If the Discharger undertakes an additional SEP, it shall reimburse the Regional Water Board for its costs of evaluating, memorializing, and overseeing such work. Such costs are in addition to the SEP Amount. The Discharger shall advise the Designated Regional Water Board Representative within 30 days of a request, whether it elects to propose an additional SEP or pay the additional administrative civil liability within 15 days of its response. A new SEP proposal shall be made within 60 days of its response. If the new SEP proposal is not accepted, the Discharger shall pay its additional administrative liability within 30 days of its receipt of the notice that the SEP proposal is not accepted.
- j. If the SEP is not fully implemented within the SEP Completion Period required by this Order, the Designated Regional Water Board Representative shall issue a Notice of Violation (NOV). As a consequence, the Discharger shall be liable to pay the entire Suspended Liability or some portion thereof, or require the remaining implementation of the SEP.

4. The issuance of this Order is an enforcement action to protect the environment, and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, §§ 21000-21177) pursuant to title 14, California Code of Regulations, sections 15308 and 15321, subdivision (a)(2).
5. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board to review the action in accordance with section 13320 of the CWC and title 23, California Code of Regulations, section 2050. The petition must be received by the State Water Resources Control Board within thirty days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

IT IS HEREBY ORDERED, pursuant to CWC section 13385, that:

1. The Discharger is assessed a total civil liability of \$40,300. Of that \$40,300 in civil liability, the Discharger has paid \$20,800 to the CAA. The Discharger shall direct the remaining sum of \$19,500 to fund the SEP described in Attachment "A" and discussed in Finding No. 3 above. The administrative civil liability in the amount of \$19,500 shall be suspended pending the completion of the SEP in accordance with the terms of this Order.
2. The Discharger shall submit reports to the Regional Water Board staff describing the completion of the SEP according to the following time schedule.

TASK	FINAL REPORTS DUE
Submit a certified statement documenting expenditures by the Discharger pursuant to 3.f. above.	February 15, 2011
Submit a Project Completion Report, under penalty of perjury stating that the SEP has been completed in accordance with the terms of this Order.	February 15, 2011

3. The funds expended by the Discharger to complete the SEP shall at least equal the amount of \$19,500. In the event that the Discharger is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that it expended funds in the amount of \$19,500 for the completion of the SEP, the Discharger shall pay the difference between the suspended administrative civil liability and the amount the Discharger can demonstrate it actually spent on the completion of the SEP, as an administrative civil liability. All payments shall be made payable to the CAA.
4. If, given written justification from the Discharger, the Executive Officer determines that a delay in the SEP time schedule, described above, is beyond the reasonable

control of the Discharger, the Executive Officer may revise the time schedule as appropriate. Written justification must be received by the Executive Officer before the specific due date occurs, must describe circumstances causing the delay, and must state when each task of the SEP will be completed.

5. If the Discharger fails to fully implement the SEP in compliance with the time schedule provided in this Order, or any subsequent revisions made by the Executive Officer as described in Paragraph 4, the Regional Water Board staff shall issue an NOV to the Discharger. Upon issuance of the NOV the Discharger shall be liable to pay the entire suspended administrative civil liability amount of \$19,500 within 30 days of receipt of the NOV. Completion of the SEP or payment of the suspended liability amount does not relieve the Discharger of its independent obligation to take necessary actions to achieve compliance with its WDRs.
6. Upon the Executive Officer's determination that the SEP, as described in Finding No. 3 of this Order, has been satisfactorily completed, the respective suspended liability of \$19,500 shall be permanently waived.
7. Fulfillment of the Discharger's obligations under the Order constitutes full and final satisfaction of any and all liability for each claim in the Complaint in accordance with the terms of the Order
8. Notwithstanding the issuance of this Order, the Regional Water Board shall retain continuing jurisdiction to determine compliance with the terms of this Order, as well as the authority to assess additional penalties for other violations of the Discharger's waste discharge requirements.

Certification

I, Catherine Kuhlman, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region on January 27, 2011.

Catherine Kuhlman
Executive Officer