

Attachment A – Specific Factors Considered

ACL Complaint No. R1-2011-0048
North Bay Construction, Inc.

Each factor of the State Water Resources Control Board Enforcement Policy and its corresponding score for the alleged violation is presented below:

Calculation of Penalty

I. **Step 1. Potential for Harm for Discharge Violations**

The potential for harm to the environment associated with the violation is eight (8). This is determined by the sum of the factors for:

- (a) The potential for harm to beneficial uses is four (4) (above moderate) because impacts to beneficial uses of Laguna de Santa Rosa were observed or likely substantial. Beneficial uses of Laguna de Santa Rosa include:

- Agricultural Supply
- Groundwater Recharge
- Water Contact Recreation
- Non-Contact Water Recreation
- Commercial and Sport Fishing
- Warm Freshwater Habitat
- Cold Freshwater Habitat
- Wildlife Habitat
- Rare, Threatened, or Endangered Species
- Migration of Aquatic Organisms
- Spawning, Reproduction, and /or Early Development

Groundwater Recharge – Public and Private water wells are located downstream from the spill location. Residences were warned not to use their water wells if the well heads were submerged. The Russian River County Water District and Sweetwater Springs Water District were notified to take appropriate action to protect their water supplies.

Water Contact and Non-Contact Recreation – Signs were posted at public access areas to warn the public about contaminated waters resulting from the spill.

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, all of which reduce the cold and warm water fish and aquatic 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.

- (b) The physical, chemical, biological or thermal characteristics of the discharge is three (3) (above moderate risk) because 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 a sanitary sewer overflow 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 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 non-contact water recreation and harm to fish and wildlife as a result of elevated bacteria levels including pathogens.

(c) The susceptibility to cleanup or abatement is one (1) (less than 50% susceptible to cleanup) because less than 50 percent of the discharge was susceptible to cleanup or abatement. The sanitary sewer overflow discharged directly to Laguna de Santa Rosa and could not be recovered.

II. **Step 2. Assessment for Discharge Violations**

Because the violation resulted in a large volume sewage spill, liability is proposed both on a per gallon and a per day basis, (pursuant to CWC Section 13385) as shown below.

Per Gallon Assessment

The deviation from requirements is major. Prohibition C.1 of State Water Resources Control Board Order No. 2006-003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, provides that any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited. The violation resulted in a discharge of untreated wastewater to the Laguna de Santa Rosa, rendering the prohibition ineffective.

In addition, Section 301 of the 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 National Pollutant Discharge Elimination System (NPDES) permit. The discharge of untreated wastewater to the Laguna de Santa Rosa was not in compliance with an NPDES permit, rendering the requirements of Section 301 of the Clean Water Act (33 U.S.C. § 1311) and CWC Section 13376 ineffective.

Therefore, in accordance with Table 1-Per Gallon Factor for Discharges on Page 14 of the Enforcement Policy, a multiplier of 0.6 is appropriate.

Per Day Assessment

The deviation from requirements is major, for the same reason as stated above.

Therefore, in accordance with Table 2-Per Day Factor For Discharges on Page 15 of the Enforcement Policy, a multiplier of 0.6 is appropriate.

High Volume Discharge

Considering that the violation resulted in 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.)

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| <p><u>INITIAL LIABILITY AMOUNT</u></p> <p>The Initial Liability Amounts for the violation calculated on a per gallon and a per day basis, (pursuant to CWC Section 13385) are as follows:</p> <p><u>Per Gallon Liability</u> (141,500 [142,500 – 1,000]) X (.6) X (\$4.50) = \$382,050</p> <p><u>Per Day Liability</u> (10,000) X (.6) = \$6,000</p> <p style="text-align: right;">Total Initial Liability = \$388,050</p> |
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III. Step 3. Per Day Assessments For Non-Discharge Violations

This step is not applicable because the violation is a discharge violation.

IV. Step 4. Adjustment Factors

- (a) Culpability: The degree of culpability is 1.3. The spill was caused by the negligence of North Bay Construction when it installed a pipe joint that was not in accordance with the direction given by the City’s engineer.
- (b) Cleanup and Cooperation: North Bay Construction was not in a position to respond to the spill. Therefore, a neutral multiplier of 1 is appropriate.
- (c) History of Violations: North Bay Construction has no history of violations. Therefore, a neutral multiplier of 1 is appropriate.

V. Step 5. Determination of Total Base Liability Amount

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| <p><u>TOTAL BASE LIABILITY AMOUNT</u></p> <p>The Total Base Liability amount is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.</p> <p>(Initial Liability) X (Culpability Multiplier) X (Cleanup and Cooperation Multiplier) X (History of Violations Multiplier) = Total Base Liability</p> <p>(\$388,050) X (1.3) X (1) X (1) = \$504,465</p> <p style="text-align: right;">Total Base Liability = \$504,465</p> |
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VI. Step 6. Ability to Pay and Ability to Continue in Business

North Bay Construction is a major construction company based in Petaluma, CA, that has between 200 and 250 employees and has annual revenues of approximately \$50-\$100 Million. North Bay Construction therefore has the ability to pay the proposed liability and continue in business. Accordingly, the Total Base Liability is not adjusted.

VII. Step 7. Other Factors as Justice May Require

As of the date of the issuance of this Complaint, the Regional Water Board Prosecution Team has incurred costs of investigation and enforcement in the amount of \$15,525, based on 115 hours of time at an average staff cost of \$135 per hour. In accordance with the Enforcement Policy, this amount is added to the Total Base Liability Amount.

$\$504,465 + \$15,525 = \mathbf{\$519,990}$

VIII. Step 8. Economic Benefit

There were no savings to North Bay Construction by improperly installing the joint.

IX. Step 9. Maximum and Minimum Liability Amounts

As discussed in the Complaint, the maximum liability that may be imposed for the violations alleged herein is \$1,425,500.

There is no minimum liability that must be assessed for the violations alleged herein.

The proposed liability falls within the maximum and minimum liability amounts.

X. Step 10. Final Liability Amount

The final liability amount proposed is **\$519,990**.