

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Order No. R1-2010-0075

For

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

In the Matter of
City of Santa Rosa
Laguna Subregional Water Reclamation Facility
WDID No. 1B83099OSON

Sonoma County

The California Regional Water Quality Control Board, North Coast Region (Regional Water Board), finds the following:

1. The City of Santa Rosa (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, California.
2. The Regional Water Board adopted Waste Discharge Requirements (WDRs) Order No. R1-2006-0045, National Pollutant Discharge Elimination System Permit (NPDES) No. CA 0022764 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.
3. 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).
4. On May 26, 2010, the Assistant Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R1-2010-0057, which proposed that the Discharger be assessed an administrative civil liability in the amount of \$72,750 pursuant to California Water Code (CWC) section 13385(c) and (h) for violations of the WDRs.

5. 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.
6. CWC Section 13385(h)(1) requires the Regional Board to assess a mandatory minimum penalty (MMP) of three thousand dollars (\$3,000) for each serious violation.
7. CWC Section 13385(h)(2) states, in part, the following: “For the purpose of this section, a ‘serious violation’ means any waste discharge that violates the effluent limitations for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.”
8. By letter dated June 2, 2010, the Discharger waived its right to a public hearing within 90 days. In a subsequent letter dated June 24, 2010, the Discharger requested to pay the sum of \$36,375 to the Cleanup and Abatement Account (CAA) and to apply the remaining balance of \$36,375 towards a Supplemental Environmental Project (SEP). The Discharger paid \$36,375 to the CAA on June 25, 2010 and submitted the final SEP proposal, approved by the Prosecution Team, for which the Discharger will spend at least \$36,375.
9. The proposed SEP will extend the Discharger’s Safe Medicine Disposal Pilot Program for at least 15 months, beginning August 1, 2010. The Discharger started this program as part of the settlement of ACL Complaint No. R1-2007-0012. The purpose of the program is to reduce the amount of pharmaceuticals discharged to the Laguna Subregional Wastewater Treatment Plant. The program encourages proper disposal of out-of-date medications by providing drop off locations at pharmacies throughout Santa Rosa, Rohnert Park, Cotati, and Sebastopol. As of June 2010, the program has collected in excess of 10,000 pounds of residential pharmaceutical waste, which would have normally been discharged to the sewer system or landfill. Attachment A, attached hereto and incorporated herein by this reference, describes the scope of work of the proposed SEP and provides a time schedule for its implementation.
 - 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, page 2, 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 February 28, 2012, 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 February 28, 2012, 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 9.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. 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.
10. 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).

11. 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 \$72,750. Of that \$72,750 in civil liability, the Discharger has paid the sum of \$36,375 to the CAA. The Discharger shall direct the remaining sum of \$36,375 to fund the completion of the SEP described in Attachment A. The \$36,375 shall remain suspended pending completion of the SEP. The SEP outlined in Attachment A shall be incorporated into this Order and satisfies the State Water Board's Enforcement Policy. The administrative civil liability in the amount of \$36,375 shall be suspended pending the completion of the SEP in accordance with the terms of this order.
2. The Discharger shall comply with requirements in Finding 9 above.
3. The Discharger shall submit to the Regional Water Board staff reports describing the implementation and completion of the SEP according to the following time schedule:

TASKS TO BE PERFORMED AND REPORTS TO BE SUBMITTED	DEADLINES
Submit Quarterly Progress Reports regarding the Implementation of the Safe Medicine Disposal Program.	October 15, 2010 January 15, 2011 April 15, 2011 July 15, 2011 October 15, 2011 January 15, 2012
Submit a report, under penalty of perjury stating that the SEP has been completed in accordance with the terms of this Order pursuant to Finding 9.e.	On or before February 28, 2012
Submit a certified statement documenting expenditures by the Discharger pursuant to Finding 9.f. above.	On or before February 28, 2012

4. If, given written justification from the Discharger, the Executive Officer determines that a delay in the Project implementation schedule is beyond the reasonable control of the Discharger, the Executive Officer may revise the implementation 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. The penalty amount of \$72,750 shall be permanently suspended upon the Executive Officer's determination that the Discharger has completed the SEP satisfactorily, as described in Attachment A of this Order. The final report shall contain documentation of expenditures. The amount of the suspended penalty shall not exceed the Discharger's actual expenses. 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. The Discharger shall provide evidence in the Project Completion Report to the Regional Water Board of payment in full supporting the SEP by February 28, 2012. Failure to pay the full amount by February 28, 2012, will result in the Discharger being required to pay the suspended \$36,375 penalty immediately due and payable to the Regional Water Board for deposit in the CAA.
7. Notwithstanding the issuance of this Order, the Regional Water Board shall retain continuing jurisdiction to determine compliance with the terms of the suspended penalty provisions above, as well as the authority to assess additional penalties for other violations of the Discharger's waste discharge requirements.
8. 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.

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 October 28, 2010.

Catherine Kuhlman
Executive Officer