

EXHIBIT 88

amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

RESPONSIBLE PARTY

5. HSR. Inc. is a general engineering services contractor with expertise in storm water pollution control who is covered by the General Permit and the Storm Water Prevention Pollution Plan (hereinafter SWPPP) for the Landfill 8 and Landfill 10 construction sites.
 - a) In June 2009, HSR. Inc. signed and certified a "Notice of Intent" to obtain coverage under the General Permit and prepared and certified a SWPPP for the Landfill 8 and Landfill 10 construction sites.
 - b) HSR. Inc. included a certificate of training in the SWPPP for the Landfill 8 and Landfill 10 construction sites from a SWPPP training course offered by Shasta College on May 16, 2008.
 - c) HSR. Inc. is designated as the "SWPPP Manager" for the Landfill 8 and Landfill 10 construction sites. As stated in the SWPPP (Section 300.5), the SWPPP Manager has "primary responsibility and significant authority for the implementation, maintenance, inspection and amendments to the approved SWPPP." Specific responsibilities listed for the SWPPP Manager position include: ensuring full compliance with the SWPPP and the Permit; conducting pre-storm, storm, and post-storm inspections; and implementing prompt and effective erosion and sediment control measures.
6. HSR. Inc. was contracted by the Presidio Trust to perform SWPPP services at the Landfill 8 and Landfill 10 construction sites. Several representatives of HSR. Inc. were working at the Landfill 8 and Landfill 10 construction sites each day during the week of October 12 through 18, 2009 ("Presidio Weekly Progress Report #19) for the October 13th and 19th, 2009 rain events. Notes in the weekly report show that Presidio Trust authorized work change requests and agreed to pay premium wages for weekend work so that HSR. Inc. could perform SWPPP services.

ALLEGED DISCHARGE – LANDFILL 8 CONSTRUCTION SITE

7. Problems with the Landfill 8 SWPPP were noted during storm events on October 13th and 19th, 2009. According to an "Erosion and Corrective Action" report dated January 26, 2010, surface ponds were present at the site, water was flowing from the surface ponds into the Landfill 8 construction zone, and erosion gullies formed within fill material placed during construction activities. Erosion that occurred during the rain events violated Section A.5(b)(1) and Section A.6 of the General Permit:
 - a) "...Runoff from off-site areas should be prevented from flowing through areas that have been disturbed by construction unless appropriate conveyance systems are in place..." [General Permit, A.5(b)(1)]
 - b) "At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season..." [General Permit, Section A.6]

8. HSR. Inc. took corrective measures to address SWPPP issues at the Landfill 8 construction site, which included constructing three surface impoundments to retain storm water running on to the site and to prevent further erosion of the fill material. The surface impounds were constructed within the Landfill 8 construction zone over boundaries of the underlying landfill.
 - a) Corrective action did not prevent off-site runoff from entering the construction zone and did not address the violation of Section A.5(b)(1) of the General Permit (Allegation 7).
 - b) The construction of surface impoundments over a landfill violates Chapter 15, section 2546(f) of the CWC.

“Cover materials shall be graded to divert precipitation from the waste management unit, to prevent ponding of surface water over wastes, and to resist erosion as a result of precipitation with the return frequency specified in Table 4.1 of this article.”
9. Regional Water Board staff were not notified about problems with the Landfill 8 SWPPP or consulted about the corrective actions taken to address surface ponding and erosion at the construction site.
10. A storm water discharge occurred at the site during a rain event on January 18, 2010 after surface impoundments constructed over Landfill 8 failed. Failure of the surface impoundments released a large volume of water, which caused a massive sediment discharge at the landfill site. Storm water and sediment (in the range of 900 to 1500 cubic yards of material) were discharged from the Landfill 8 construction site leaving an erosion channel within the cover material approximately 600 feet in length, up to 60 feet wide, and up to 12 feet deep.
11. Sediment-laden storm water discharged from the Landfill 8 construction site on January 18, 2010 to Presidio Buildings 1809 and 1910 and to the storm drain system along Wyman Avenue. As shown in the January 26, 2010 Erosion and Corrective Action Plan, the discharge crossed Wyman Avenue and may have impacted receptors further downgradient (the storm drain system for Park Presidio and Mounfain Lake). Sediment deposition around Presidio Buildings 1809 and discharges to the storm drain system for Wyman Avenue caused a nuisance condition and caused or threatened to cause pollution in violation of Discharge Prohibition A.3 of the General Permit:

“Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.”

ALLEGED DISCHARGES – LANDFILL 10 CONSTRUCTION SITE

12. HSR. Inc. failed to implement an adequate SWPPP at the Landfill 10 construction site during rain events on October 13 and 19, 2009. Inadequate implementation of Best Management Practices (hereinafter BMPs) under the SWPPP did not control and abate storm water discharges from the site resulting in violations of Section A.6 and Special Provision C.2 of the General Permit.

a) Rain events on October 13th and 19th were significant (2.49 inches on October 13th and between 0.63 and 0.74 inches over a 15- to 20-minute period on October 19th) and were predicted in weather forecasts with sufficient time to reinforce erosion and sediment controls as needed.

b) The intent of SWPPPs for construction sites is to have adequate protection from storm water discharges for all seasons. As stated in the General Permit Fact Sheet:

“The requirements of the General Permit are intended to be implemented on a year-round basis, not just during the part of the year when there is a high probability of a precipitation event which results in storm water runoff. The permit should be implemented at the appropriate level and in a proactive manner during all seasons while construction is ongoing.”

c) HSR. Inc. violated General Permit Section A.6 and Special Provision C.2 by not having adequate BMPs for source (erosion) control and sediment retention to prevent sediment-laden discharges from the site on October 13 and 19, 2009. Photographs taken of the Landfill 10 construction site on October 12, 2009 show no erosion controls and limited sediment retention measures to control storm water discharges from a 2.4-acre area graded to a 1.75:1 (30 degree) slope.

- Under Section A.6 of the General Permit:

“At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season...”

- Under Special Provision C.2 of the General Permit:

“All Dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The Discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the Best Available Technology/Best Conventional Technology performance standard.”

13. An estimated 41,827 gallons of sediment-laden storm water discharged from the construction site due to failure of BMPs at Landfill 10 during the October 13 and 19, 2009 rain events, This estimate is based on storm water discharging from a 1.75:1 (30 degree) graded slope of approximately 2.4 acres. The estimate does not consider gallons of sediment-laden storm water which also discharged along the perimeter and top of the sloped area.

14. Sediment-laden storm water was discharged from the Landfill 10 construction site to storm drains, protected environmental habitat, and a source of drinking water in violation of the General Permit (Discharge Prohibition A.3 and Receiving Water Limitation B.1). This also is a violation of Prohibition No. 9 of the Basin Plan

a) Sediment-laden discharges overwhelmed sediment retention measures installed adjacent to 15th Avenue and discharged to storm drains along this roadway in violation of Discharge Prohibition A.3:

“Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.”

- b) Sedimentation associated with the discharges impacted environmental habitats at the base of the graded slope and along the creek and riparian corridor of Lobos Creek. Habitat for protected fauna (*Lessingia germanorum*) was impacted at the base of the slope. The extent of impacts to this and other habitats along Lobos Creek is being evaluated by the Presidio Trust.
- c) Turbidity in Lobos Creek was significantly elevated due to sediment releases from Landfill 10 during the October 13th and 19th rain events requiring a water treatment plant to cease operation from October 13 through 23, 2009. The water treatment plant uses water from Lobos Creek as a source of drinking water. This beneficial use impact violates Receiving Water Limitation B.1 of the General Permit and also violates Prohibition No. 9 of the Basin Plan.

- Receiving Water Limitation B.2

“The Storm Water Pollution Prevention Plan (SWPPP) “developed for the construction activity covered by this General Permit shall be designed and implemented such that storm water discharges and authorized nonstorm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable Regional Water Board’s Basin Plan.”

- The following discharge is prohibited under the Basin Plan (Prohibition 9):

“Silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface water or to unreasonably affect or threaten to affect beneficial uses.”

15. Regional Water Board staff inspected the Landfill 10 construction site on October 22 and November 4, 2009 and issued a Notice of Violation to HSR, Inc. and the property owner (the Presidio Trust) on November 12, 2009. This document cited BMP failures, SWPPP inadequacies, and unauthorized discharge of sediment to Lobos Creek.

PROPOSED CIVIL LIABILITY

16. Pursuant to CWC Section 13385(c)(1) and (c)(2), the Regional Water Board can administratively assess a liability of \$10,000 for each day in which a violation occurs, and \$10 per gallon for volume discharges that are not cleaned-up and exceed 1,000 gallons. The maximum civil liability that may be imposed for violations cited in this Complaint is \$438,270.
- a) The maximum civil liability for one day of discharge from the Landfill 8 construction site is \$10,000. Gallons of discharge were not considered for this maximum penalty determination because of cleanup of the sediment discharge by Presidio Trust and HSR, Inc.
 - b) The maximum civil liability for 2 days (\$20,000) and 40,827 gallons (\$408,270) of discharge from the Landfill 10 construction site is \$428,270.

17. The Regional Water Board's Prosecution Team recommends imposing civil liability on HSR. Inc. in the amount of \$118,085 for the alleged discharges from the Landfill 8 and Landfill 10 construction sites. In determining the amount of civil liability to be assessed against HSR. Inc., the Regional Water Board must take into consideration the factors described in CWC section 13385(e) as discussed in the Water Quality Enforcement Policy¹. These factors are discussed in the "Administrative Civil Liability Assessment" attached to this Complaint.

CEQA EXEMPTION

18. This action is an enforcement action and is, therefore, exempt for the California Environmental Quality Act (CEQA), pursuant to Title 14, California Code of Regulations, Section 15321.



Thomas Mumley
Assistant Executive Officer

July 15, 2010
Date

Attachments: Waiver Form
 Administrative Civil Liability Assessment

¹ On November 17, 2009, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2009-00 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 13385(e). The policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

**ADMINISTRATIVE CIVIL LIABILITY ASSESSMENT
COMPLAINT NO. R2-2010-0094**

The Regional Water Board's Prosecution Team proposes administrative civil liability against HSR, Inc in the amount of \$118,085. This proposed liability is based on an assessment of the following factors in accordance with the violations alleged in Complaint No. R2-2010-0094, requirements of CWC section 13385(e), and the penalty calculation methodology described in the Water Quality Enforcement Policy (Enforcement Policy), dated November 17, 2009.

- **CWC section 13385(e)**

This statute requires consideration of the following factors for administrative civil liability assessments: the nature, circumstances, extent, and gravity of the violation or violations; susceptibility of the discharge to cleanup or abatement; degree of toxicity of the discharge; ability of the violator to pay and the effect on the violator's 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 violation; and other matters that justice may require.

- **Enforcement Policy**

The State Water Resources Control Board amended the Enforcement Policy on November 17, 2009 with the adoption of Resolution No. 2009-00. The policy became effective on May 20, 2010 upon approval by the Office of Administrative Law.

The amended policy addresses factors required by statute (above), and it provides a statewide methodology for calculating administrative civil liabilities. The methodology considers duration of the violation and volume of discharge (if applicable), and it allows for quantitative assessments of the following: 1) potential for harm to beneficial uses; 2) physical, chemical, biological or thermal characteristics of the discharged material; 3) susceptibility of the discharge to cleanup; 4) deviation from regulatory requirements; 5) culpability; 6) cleanup and cooperation; 7) history of violations; 8) ability to pay; 9) economic benefit; and (10) other factors as justice may require.

The Enforcement Policy should be used as a companion document in conjunction with this administrative civil liability assessment since the penalty calculation methodology and definition of terms that are in the policy are not replicated herein. A copy of the Enforcement Policy can be found at:

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

The remainder of this document discusses how the various factors that are required to be considered in the assessment of administrative civil liabilities for alleged discharges from the Landfill 8 and Landfill 10 construction sites were assessed. In most cases, the factors are addressed separately for each construction site under the LANDFILL 8 and LANDFILL 10 headings. Where there is only one discussion, the circumstances around the factor for both construction sites were similar and are therefore discussed collectively.

**ADMINISTRATIVE CIVIL LIABILITY ASSESSMENT
COMPLAINT NO. R2-2010-0094**

LANDFILL 8

LANDFILL 10

Alleged Violations

Discharge violation assessed for 1 day, volume of the discharge not assessed.

Discharge violation assessed for 2 days at a volume of 40,827 gallons

Potential for Harm to Beneficial Uses

Threats to beneficial uses are moderate. The discharge, which mobilized in the range of 900 to 1500 cubic yards of material, was not a minor event, but the sediment-laden discharges to storm drain systems and sedimentation in buildings and in the vicinity of protected "Lessingia germanorum" habitat would not likely cause appreciable acute or chronic effects.

The threat to beneficial uses is above moderate due to impacts to Lobos Creek which include causing temporary restrictions on the use of a drinking water source.

Characteristics of the Discharge

Sediment-laden discharges, which occurred at both the Landfill 9 and Landfill 10 construction sites, pose a moderate threat to receptors. Sediment-laden water that is transported to surface waters via overland flow or through storm drain systems can have deleterious effects on aquatic environments and a variety of aquatic organisms. Some of the most significant impacts from increased turbidity and sedimentation in surface waters include: (1) reduction of light penetration and decreased rates of photosynthesis (food generation) within the food chain; (2) reduction in the respiratory capacity and feeding efficiency of fish; and (3) smothering of aquatic habitats decreased survival rates of hatchlings and juvenile species.

Susceptibility to Cleanup and Abatement

Much of the discharged material was sand fill and more than 50% of the solid material in the discharge was not transported far from the construction site and was subject to cleanup.

More than 50% of the storm water discharge exited the construction site and is not susceptible to cleanup or abatement.

Deviation from Requirement

There was a major deviation from storm water pollution prevention requirements. Significant runoff onto the construction site during storm events in October 2009 required changes to Best Management Practices (BMPs). HSR, Inc. addressed the issue by creating surface water impoundments over a landfill (in violation of landfill regulations). These activities were not reported to Regional Water Board staff or addressed in an amended SWPPP, and failure of the

There was moderate deviation from storm water pollution prevention requirements. There was a SWPPP for the construction project but it was determined to be inadequate upon regulatory review. There were some sediment controls installed at the site but other controls, such as mitigating storm water runoff onto the construction site and installing erosion control on a 2.4-acre, 1.75:1 (30 degree) graded slope, were not met.

**ADMINISTRATIVE CIVIL LIABILITY ASSESSMENT
COMPLAINT NO. R2-2010-0094**

LANDFILL 8 (cont'd)

LANDFILL 10 (cont'd)

Deviation from Requirement (cont'd)

surface impoundments during a January storm event caused significant storm water discharge (channelized erosion approximately 600 feet long, up to 60 feet wide, and up to 12 feet deep) at the construction site.

Culpability

HSR, Inc. was negligent in adequately protecting the Landfill 8 (liability increased by 1.3 multiplier) and Landfill 10 (liability increased by 1.2 multiplier) construction sites to prevent pollution from storm water runoff. HSR Inc. is a professional company providing general engineering services with adequate training in storm water pollution prevention. HSR, Inc. submitted a Notice of Intent to gain coverage by and comply with the General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ, and it prepared and certified the SWPPP for the Landfill 8 and Landfill 10 construction sites. HSR, Inc. is designated as the SWPPP Manager, and it had primary responsibility for preventing storm water pollution from the construction sites. Culpability associated with Landfill 8 is higher due to actions and behavior associated with BMPs that were implemented to address runoff onto the Landfill 8 construction site.

Cleanup and Cooperation

HSR, Inc. was cooperative and responsive but not necessarily timely to comply with regulatory requirements following the discharge events. Based on cleanup and cooperation effort, no adjustment was made to the administrative civil liability.

History of Violations

HSR, Inc. prepared a single SWPPP for multiple construction projects at the Presidio including Landfills 8 and 10. HSR, Inc. received a Notice of Violation from Regional Water Board staff on November 12, 2009 for its work at the Presidio following a review of its SWPPP and after discharges and inspections of the Landfill 10 construction site. This history of violations preceded the discharge from Landfill 8 in January 2010 (liability increased by 1.1 multiplier).

No liability adjustment was made based on a history of violations.

Ability to Pay

HSR, Inc. is an engineering contractor operating out of a single facility in Santa Clara. HSR, Inc. has approximately 13 employees and makes approximately \$1,200,000 in annual sales (ref. manta.com website). The facility includes an equipment storage yard with about 36 pieces of heavy construction equipment (trucks, excavators, trailers, tanks,

**ADMINISTRATIVE CIVIL LIABILITY ASSESSMENT
COMPLAINT NO. R2-2010-0094**

grading equipment, etc. based on aerial photography) considered to be company assets.

LANDFILL 8 (cont'd)

LANDFILL 10 (cont'd)

Economic Benefit or Savings

HSR, Inc. benefited in time and materials by not adequately protecting the Landfill 8 and Landfill 10 construction sites for rain events. For construction activity in California, approximately \$2,000 to \$6,000 per acre¹ is needed to provide the necessary erosion and sediment control measures for construction sites depending on the slope and soil type.

The Landfill 8 and Landfill 10 construction sites are about 2.6 and 3.4 acres in size, respectively. The total cost for SWPPP BMPs to protect 6 acres of construction sites is in the range of \$12,000 to \$36,000.

Some protective measures were installed at both the Landfill 8 and Landfill 10 construction sites when the discharges occurred. The Landfill 8 construction site required construction of a runoff conveyance system to prevent storm water from entering the construction zone. Savings include the design and construction of this protective measure. The Landfill 10 construction site also required control of runoff into the construction zone and more effective erosion controls, particularly for the 2.4-acre graded slope that was unprotected. The savings from the latter is in the range of \$4,800 to \$14,000 and probably at the higher end due to slope and soil type.

Some additional BMPs were installed after the discharge events rendering the economic benefit as a delayed instead of actual savings. Considering this, the economic benefit is estimated to be no more than \$10,000 to \$15,000.

Other Matters As Justice May Require

Staff time to investigate the incident and prepare the Complaint and supporting evidence is estimated to be 88 hours. Based on an average cost to the State of \$150 per hour, the total cost is \$13,200.

¹ Soil Stabilization BMP Research for Erosion and Sediment Controls; Cost Survey Technical Memorandum; California Department of Transportation; July 2007.