CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. R2-2009-0066

ADMINISTRATIVE CIVIL LIABILITY FOR:

MT. VIEW SANITARY DISTRICT
CONTRA COSTA COUNTY

This Order is issued in reference to an adjudicative proceeding initiated by the California Regional Water Quality Control Board, San Francisco Bay Region's ("Regional Water Board's") investigation of a discharge of untreated wastewater resulting from a sanitary sewer overflow ("SSO") by the Mt. View Sanitary District ("Discharger") and the issuance of Administrative Civil Liability Complaint No. R2-2009-0027. The Parties to the proceeding are the Regional Water Board's Prosecution Team and the Discharger.

The Regional Water Board has been presented with a proposed settlement of the claims alleged in Complaint No. R2-2009-0027. The proposed settlement is set forth in a Settlement Agreement (Attachment 1) that represents a mutually agreed-upon resolution of the Prosecution Team's claims through the payment of an administrative civil liability under California Water Code ("CWC") section 13385 in the amount of $270,000 to the Cleanup and Abatement Account ($125,000 of which will be suspended provided it is satisfied through completion of a Supplemental Environmental Project ("SEP") as provided in the Settlement Agreement). The Parties recommend that the Regional Water Board or the Executive Officer under his delegated authority issue this Order to effectuate their proposed settlement.

Having provided public notice of the proposed settlement and an opportunity for comment, the Executive Officer finds that:

1. The Discharger owns and operates a sanitary sewer collection system (collection system) consisting of approximately 108 miles of gravity sewer pipe, 2 miles of force mains, and 4 pump stations. The Discharger's collection system covers an area of approximately 5 square miles and serves an approximate population of 18,250 consisting primarily of residential customers and some light industrial/commercial customers.

2. There was a 586,000 gallon SSO caused by electrical equipment failure and faulty wiring. The SSO originated from the Discharger's collection system and occurred from January 4, through January 5, 2009. It entered Vine Hill Creek via a storm drain and ultimately reached a brackish marsh where some fish were killed.

3. The Discharger is subject to Regional Water Board Order No. R2-2006-0063 (NPDES Permit No. CA0037770). Order No. R2-2006-0063 prescribes waste discharge requirements for the Discharger's discharges.

4. Order No. R2-2006-0063 includes the following prohibition:

   Section III. Discharge Prohibitions
   B. The bypass of untreated or partially treated wastewater to waters of the State, either at the Discharger's Wastewater Treatment Plant (Facility) or from the collection system or pump stations tributary to the Facility, is prohibited, except as provided for bypasses under the conditions stated in 40 CFR 122.41(m) (4), in A.12 of the Standard Provisions and Reporting Requirements for NPDES Surface Water Discharge Permits, August 1993…

5. The SSO is a violation of the Discharge Prohibition III B of Order No. R2-2006-0063.

6. Pursuant to CWC Section 13385(a)(2), a discharger is subject to civil liability for violating any waste discharge requirement issued pursuant to Chapter 5.5, which is the Water Code chapter that applies to the Board's issuance of NPDES permits. The Regional Water Board may impose civil liability administratively pursuant to CWC, Chapter 5, Article 2.5 (commencing at Section 13323) in an amount not to exceed the sum of ten thousand dollars ($10,000) for each day in which a violation occurred plus ten dollars ($10) for each gallon exceeding 1,000 gallons of the discharge that is not cleaned up.

7. On March 30, 2009, the Regional Water Board's Assistant Executive Officer issued an Administrative Civil Liability Complaint in the amount of $498,000 for public notice and comment.

8. The Discharger submitted evidence that showed that the SSO did not result in irrecoverable damages to Vine Hill Creek and that the Discharger was not culpable for the PLC failure. The evidence indicates that the fish community in Vine Hill Creek is up to 74% recovered and is in a trajectory toward full recovery. Additionally, the evidence indicates that it was not necessary for the Discharger to install PLC surge protection at pump station no. 4 because (a) the pump station had a backup system in place and (b) the PLC has been subjected to power surge(s) in its 15 years of operation and none of these power surge(s) resulted in PLC failure. For these reasons, the gravity of the SSO and the Discharger's culpability is low; as a result, the penalty is lower.

.

9. The Executive Officer has considered the exhibits and information in the record and comments provided by the Parties and the public, including the revised penalty amount discussed in the attached Settlement Agreement, and has determined that the Discharger is subject to civil penalties. In determining the amount of civil liability to be assessed against the Discharger, the Executive Officer has taken into consideration the factors described in CWC Sections 13385(e), as applicable. The Executive Officer finds that the penalty amount agreed to by the Parties is reasonable based on the factors in CWC Sections 13385(e).

10. This issuance of this order is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.

IT IS HEREBY ORDERED that:

1. The Settlement is approved;

2. The Discharger shall pay the sums agreed to under the Settlement Agreement (Attachment 1), which are:

   A. The Discharger will pay a total penalty of $270,000 to the State Water Resources Control Board's Cleanup and Abatement Account.

   B. In lieu of $ 125,000 of that penalty, the Discharger agrees to complete a Supplemental Environmental Project (SEP) at a cost of no less than $125,000 towards a levee sealing project to improve water control and management in Peyton Slough and McNabney Marsh. This SEP is described in Attachment 1 and includes a schedule for implementation. The Discharger will comply with the specific terms and conditions detailed in Attachment 1. Any information produced from the SEP shall indicate that the SEP is being performed in fulfillment of the settlement of an enforcement action with the Regional Water Board.

3. In the event that the Discharger does not complete the SEP, then the Discharger shall pay $125,000 in accordance with the terms of the Settlement Agreement.

4. Fulfillment of the Discharger's obligations under the Settlement Agreement constitutes full and final satisfaction of any and all liability for each claim in the Complaint in accordance with the terms of the Settlement Agreement.

Digitally signed by Bruce Wolfe
Date: 2009.10.08 15:05:36 -07'00'

Date: October 8, 2009

Bruce H. Wolfe
Executive Officer

Attachment 1: Settlement Agreement Package, dated August 11, 2009 (includes Settlement Agreement, Complaint No. R2-2009-0027 and SEP)