

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2009-0016

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
SANITARY SEWER OVERFLOW
EAST BAY REGIONAL PARK DISTRICT
DEL VALLE REGIONAL PARK
ALAMEDA COUNTY

This Complaint is issued to the East Bay Regional Park District (hereinafter “Discharger”) to assess administrative civil liability pursuant to California Water Code (“CWC”) Section 13385 and Section 13323. The Complaint addresses a discharge of untreated wastewater resulting from a sanitary sewer overflow (SSO) at its Del Valle Regional Park. The Discharger violated State Water Resources Control Board Order No. 2006-0003 DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems. The violation cited herein began on July 12, 2008, and ended on July 15, 2008.

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the “Regional Water Board”), hereby gives notice that:

1. The Discharger is alleged to have violated provisions of law for which the Regional Water Board may impose civil liability pursuant to CWC Section 13385 and Section 13323. This Complaint proposes to assess \$44,900 in penalties for the violation cited based on the considerations described in this Complaint. The deadline for comments on this Complaint is July 27, 2009, 5 p.m.
2. The Discharger owns and operates a sanitary sewer collection system (collection system) consisting of approximately 0.8 miles of gravity sanitary sewer lines, 1.6 miles of forced mains, and 6 pump stations. The collection system serves an approximate population of 1,100 consisting of transient, mostly summer populations of campers and RVs, and one private residence. Wastewater flows through areas adjacent to Lake Del Valle and Arroyo Del Valle Creek to two sewer ponds maintained by the Discharger.
3. This Complaint is issued to address a 22,260 gallon SSO caused by a pipe failure. The SSO began on July 12, 2008, and ended on July 15, 2008.
4. Unless waived, the Regional Water Board will hold a hearing on this Complaint at its September 9, 2009, meeting, at the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland. The Discharger or its representative will have an opportunity to be heard and contest the allegations in this Complaint and the imposition of civil liability. An agenda for the meeting will be mailed to the Discharger no less than 10 days before the hearing date. At the hearing, the Regional Water Board will consider whether to affirm,

reject, or modify the proposed civil liability, to refer the matter to the Attorney General for recovery of judicial liability, or take other enforcement actions.

5. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by (a) paying the civil liability in full or (b) undertaking an approved supplemental environmental project in an amount not to exceed \$13,950 and paying the remainder of the civil liability, all in accordance with the procedures and limitations set forth in the attached waiver.

ALLEGATIONS

1. On July 15, 2008, the Discharger reported to the Regional Water Board an SSO discharged to Lake Del Valle, a water of the United States, from its sewer collection system between Lift Stations 4 and 5.
 - a. On July 12, 2008, an off-duty Park ranger hiking near Arroyo Del Valle Creek in Del Valle Regional Park, discovered a suspicious seep.
 - b. On the evening of July 14, upon arriving to work the Park ranger reported the seep to another Park ranger.
 - c. On July 15, upon notification by the Park rangers, the Park supervisor investigated the situation. During the investigation, the Park supervisor turned off the Lift Station 5 pump. As a result, the seep stopped and the Park supervisor realized that it was an SSO.
 - d. Within two hours of discovering it was an SSO, the Discharger notified Regional Water Board staff, initiated cleanup efforts, and conducted sampling to determine water quality impacts.
 - e. On the same day, the Discharger closed public access to the southern area of Lake Del Valle and downstream portions of Arroyo Del Valle Creek.
 - f. On July 15, fecal coliform and e. coli sampling results were above health standards at two Lake Del Valle beaches: "West Beach South" and "West Beach Mid."
 - g. The Discharger reopened the Lake (area south of the marina) on July 17 and the Creek on July 21, when laboratory data indicated back to normal bacteria concentrations.
 - h. After excavating large amounts of soil, the Discharger discovered that the SSO was caused by a collection system forced main that had failed longitudinally.
 - i. The Discharger estimated the SSO volume to be about 22,260 gallons.
 - j. On July 18, 2008, the Discharger completed repair of the collection system pipeline.
2. The Discharger was not authorized to discharge under the Clean Water Act or the Water Code.
3. An SSO is a discharge from a collection system of raw sewage consisting of domestic wastewater. An SSO contains high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants. An SSO causes a public nuisance when untreated wastewater is discharged to areas with public exposure, such as streets, or surface waters used for drinking, fishing, or body contact recreation. An SSO that discharges to land and is not fully cleaned up or contained, may discharge to surface waters and/or infiltrate into groundwaters. SSOs pollute

surface or groundwaters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters.

REQUIREMENTS APPLICABLE TO THE DISCHARGER

1. Section 301 of the Clean Water Act provides that it is unlawful for any person to discharge any pollutant into waters of the United States unless that person has complied with all permitting requirements under the Clean Water Act.
2. The Discharger's collection system is regulated by Statewide General Waste Discharge Requirements, Order No. 2006-0003 DWQ, which was adopted by the State Water Resources Control Board (or State Water Board) on May 2, 2006. As owner of a collection system, the Discharger is required to comply with the requirements of Order No. 2006-0003 DWQ (or General WDR). The Discharger filed a Notice of Intent for coverage under the General WDR on October 24, 2006. The effective date of the General WDR is November 2, 2006.
3. Order No. 2006-0003 DWQ includes the following prohibitions:

C. PROHIBITIONS

1. *Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.*
2. *Any SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance as defined in CWC Section 13050(m) is prohibited.*

WATER CODE PROVISIONS RELEVANT TO THIS DISCHARGE

1. Pursuant to Water Code section 13385(a)(1), a discharger is subject to administrative civil liability for violating Water Code section 13376 which requires that any person who discharges pollutants to the navigable waters of the United States within the jurisdiction of the State shall file a report of the discharge in compliance with the procedures set forth in Water Code section 13260. Section 13260 in turn requires that any person discharging waste, or proposing to discharge waste, that could affect the quality of the waters of the state must file a report of waste discharge. Section 13264 provides that no person shall initiate any new discharge of waste prior to filing the report required under section 13260.
2. Pursuant to Water Code section 13385(a)(5), a regional water board may impose civil liability for a discharge of pollutants to waters of the United States in violation of violate section 301 of the Clean Water Act.
3. Pursuant to Water Code Section 13385(c) a regional water board may impose civil liability for such a discharge pursuant to Chapter 5, Article 2.5 (starting at Section 13323) in an amount not to exceed the sum of both of the following:

- a. Ten thousand dollars (\$10,000) for each day in which a violation occurred.
 - b. Ten dollars (\$10) for each gallon exceeding 1,000 gallons of discharge and not cleaned up.
4. If this matter is referred to the Attorney General for judicial enforcement, a higher liability of \$25,000 for each day of violation and \$25 for each gallon exceeding 1,000 gallons of discharge and not cleaned up, may be imposed by a superior court.

VIOLATIONS

1. The July 2008 SSO resulted in a discharge of untreated wastewater to waters of the United States, and thus violated section 301 of the Clean Water Act.
2. The discharge also violated Water Code sections 13385(a)(1) and (a)(5).

MAXIMUM LIABILITY

The maximum administrative civil liability the Regional Water Board may impose for the violations is \$242,600 based on the following calculations:

Four days of violation for SSO = 4 days x \$10,000/day/violation = \$40,000
Discharge exceeding 1000 gallons and not cleanup = (22,260 gallons - 1000 gallons recovered - 1000 gallons) x \$10/gallon = \$202,600
Total: \$202,600 + \$40,000 = \$242,600.

CONSIDERATION OF FACTORS UNDER CWC 13385

In determining the amount of civil liability to be assessed against the Discharger, the Regional Water Board has taken into consideration the factors described in CWC Section 13385. The factors described include

- The nature, circumstances, extent, and gravity of the violation or violations,
- Whether the discharge is susceptible to cleanup or abatement,
- The degree of toxicity of the discharge,
- With respect to the discharger, the ability to pay and the effect on ability to continue in business,
- Any voluntary cleanup efforts undertaken,
- Any prior history of violations,
- The degree of culpability,
- The economic benefit or savings, if any, resulting from the violation, and
- Other such matters as justice may require.

At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

1. Nature, circumstances, extent, and gravity of the violation or violations

Nature

The nature of the SSO was an estimated 4-day leak of raw undiluted sewage from a broken collection system pipeline. The Discharger estimated the volume of the SSO at 22,260 gallons. The broken pipeline was buried 12 feet underground. The SSO daylighted when the buried soils around the broken pipeline reached saturation. The SSO leak eventually entered Arroyo Del Valle Creek and Lake Del Valle.

Circumstances

The SSO occurred because of a pipe break. The pipe was only nine years old. It failed longitudinally, which is an unusual type of failure. The Discharger assumed that water seeped through the pipe break gradually, eventually building more pressure as the pipe break gradually opened up. The cause of the failure is undetermined, but the Discharger is investigating a manufacturing defect as a possible cause.

Extent

22,260 gallons of raw sewage went into the southern portion of Lake Del Valle and into Arroyo del Valle. The spatial extent of the bacterial exceedances was limited to 0.5 miles from the shoreline. The temporal extent of bacterial exceedances was 4 days.

Gravity

The gravity of this SSO is high. The SSO resulted in the discharge of raw undiluted sewage to Lake Del Valle which is an existing municipal and domestic water supply source. It also resulted in significant impacts to recreational uses of Lake Del Valle. Fecal coliform samples taken by the Discharger on Tuesday July 15 were in violation of water contact standards resulting in closure of the Lake and Creek. In addition to the closure, there was very likely actual public contact with contaminated water that was impacted by the SSO the weekend prior to the closure. However, no illnesses were reported. Lake Del Valle at Del Valle Regional Park is used extensively for swimming and fishing. At the height of the summer season, when this overflow occurred, the Park welcomes over 1,000 users per beach on any week-end day and over 2,000 users on holiday week-end days. The beneficial uses of contact water recreation (swimming) and noncontact water recreation (fishing) was lost entirely while the Discharger had to close access to the beaches, for 2 days over the entire southern portion of the Lake, and for 7 days in Arroyo Del Valle Creek.

In addition to the impacts discussed above, a number of other beneficial uses are listed in the Basin Plan for Lake Del Valle: cold freshwater habitat, fish spawning, warm freshwater habitat, and wildlife habitat. Since this SSO occurred during dry weather, it was undiluted and would pose a higher threat to water quality than a similar spill during wet weather. However, because of the slow rate of the SSO, there were no fish kills or other evidence of immediate impacts to these beneficial uses as a result of this discharge event. Also, because

there are no commercial or industrial sources at the Park, the wastewater would have less toxic pollutants that pose long-term impacts from the SSO.

2. Whether the discharge is susceptible to cleanup or abatement

The Discharger abated the discharge by turning off the pump station, and recovered an estimated 1,068 gallons of accumulated surface sewage and sewage-impacted groundwater using a sewage pumper truck. In addition, the Discharger excavated 660 gallons (12 55-gallon drums) of sewage contaminated soil to expose the broken pipeline. The Discharger disposed of the contaminated soil at a landfill.

3. Degree of toxicity of the discharge

The degree of toxicity of this SSO was high. Raw undiluted sewage, as compared to treated and/or storm 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 (measured in terms of total and fecal coliform). These pollutants exert varying levels of impact on water quality, and, as such, will adversely affect beneficial uses of receiving waters to different extents. Some possible adverse effects on water quality and beneficial uses as a result of an SSO 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 a 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 noncontact water recreation and harm to fish and wildlife as a result of elevated bacteria levels including pathogens.

4. Ability to pay and effect on ability to continue in business

The Discharger's annual operating budget includes a \$500,000 major maintenance account and a \$300,000 capital account for repairs. Regional Water Board staff believes the Discharger is able to pay the proposed civil liability. Regional Water Board staff proposes a liability that is intended to be fair and consistent with similar violations and past administrative civil liability cases.

The Discharger has an opportunity to submit records of both financial information and assets as evidence of ability to pay upon the issuance of this complaint and applicable deadlines, indicated herein and in the accompanying public notice.

5. Voluntary cleanup efforts undertaken

The Discharger shut down the pump station that fed the broken line upon discovery of the SSO, and acted expeditiously to repair the broken pipeline. Also, the Discharger voluntarily removed sewage-impacted soil to a hazardous waste facility.

6. Prior history of violations

The Discharger had an SSO in July of 2007, but it discharged entirely to land, and did not reach any surface waters.

7. Degree of culpability

The Discharger is culpable for the violations because it is responsible for the proper operation and maintenance of its collection system. However, the Discharger's degree of culpability is low for two reasons. First, because of its small size, it is not currently required to perform routine inspection of its collection system pipeline. Second, because of the longitudinal nature of the pipe failure, it appears that the failure may be the result of a manufacturing defect and could not have prevented it from occurring.

8. Economic benefit or savings

There is no evidence that the Discharger gained economic benefit or savings. In addition, the Discharger spent in excess of \$100,000 by sending sewage-contaminated soil away to a hazardous waste facility in Bakersfield. The Discharger could have avoided this high expense by disposing of the soil at a municipal landfill.

9. Other such matters as justice may require

The Discharger acted with due diligence once the SSO was discovered. The Discharger is in the process of upgrading the Del Valle Regional Park collection sewer system. All sewer lift stations have been replaced with modern equipment and will be supplemented with state of the art electronic panels and SCADA control for remote and local monitoring, communication and control. The Discharger claims the upgrades will result in minimizing the occurrence of future SSOs.

10. Staff Time

Regional Water Board Staff time to prepare the Complaint and supporting evidence is estimated to be about 100 hours. Based on an average cost to the State of \$170 per hour, the total staff cost is \$17,000.

CEQA EXEMPTION

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

June 25, 2009

Date

Dyan C. Whyte
Assistant Executive Officer

Attachments: Waiver of Hearing

WAIVER OF HEARING

If you waive your right to a hearing, the matter will be included on the agenda of a Regional Water Board meeting but there will be no hearing on the matter, unless a) the Regional Water Board staff receives significant public comment during the comment period, or b) the Regional Water Board determines it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Water Board holds a hearing under either of the above circumstances, you will have a right to testify at the hearing notwithstanding your waiver. **Your waiver is due no later than July 27, 2009, 5 p.m.**

- Waiver of the right to a hearing and agreement to make payment in full.
By checking the box, I agree to waive my right to a hearing before the Regional Water Board with regard to the violations alleged in Complaint No.R2-2009-0016 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the scheduled Hearing date. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Assistant Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Regional Water Board holds a hearing under either of the circumstances described above. If the Regional Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Regional Water Board adopts the order imposing the liability.

- Waiver of right to a hearing and agree to make payment and undertake an SEP.
By checking the box, I agree to waive my right to a hearing before the Regional Water Board with regard to the violations alleged in Complaint No. R2-2009-0016, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$13,950 and paying the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the scheduled Hearing date. The SEP proposal shall be submitted no later than **August 10, 2009**. I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 3, 2009, and be subject to approval by the Assistant Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Assistant Executive Officer, I agree to pay the suspended penalty amount within 30 days of the date of the letter from the Assistant Executive Officer rejecting the proposed/revised SEP. I also understand that I am giving up my right to argue against the allegations made by the Assistant Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Regional Water Board holds a hearing under either of the circumstances described above. If the Regional Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Regional Water Board adopts the order imposing the liability. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Assistant Executive Officer. I understand failure to adequately complete the approved SEP will require immediate payment of the suspended liability to the CAA.

- Waiver of right to a hearing within the 90-day hearing requirement in order to extend the hearing date.

By checking this box, I hereby waive my right to have a hearing before the Regional Water Board within 90 days after service of the Complaint, but I reserve the right to have a hearing in the future. I agree to promptly engage the Regional Water Board prosecution staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board delay the hearing so that the Discharger and the prosecution team can discuss settlements. It remains within the discretion of the Regional Water Board to agree to delay the hearing.

Name (print)

Signature

Date

Title/Organization