

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2009-0057

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
SANITARY SEWER OVERFLOWS
CITY OF SAUSALITO
MARIN COUNTY

This Administrative Civil Liability Complaint (“Complaint”) is issued under authority of California Water Code (“CWC”) Section 13323 to the City of Sausalito (“Discharger”) to assess administrative civil liability pursuant to CWC Section 13385. The Discharger is alleged to have violated Section 301 of the Clean Water Act (33 U.S.C. § 1311), CWC Section 13376, and State Water Resource Control Board (“State Water Board”) Order 2006-0003-DWQ by discharging untreated wastewater to waters of the United States. This Complaint alleges that two sanitary sewer overflows (“SSOs”), caused by the Discharger’s failure to properly maintain and operate its sanitary sewer collection system (“collection system”), occurred from July 7, 2008, through July 21, 2008, and on July 22, 2008, respectively.

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (“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. This Complaint proposes to assess seventy-five thousand and three hundred dollars (\$75,300) in penalties for the violations cited herein and based on the considerations described in this Complaint.
2. Unless waived, the Regional Water Board will hold a hearing on this Complaint at its April 14, 2010, 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.
3. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by paying the civil liability in full, all in accordance with the procedures and limitations set forth in the attached waiver.

4. The Discharger's sewer lines are part of an 80-mile collection system that is jointly owned and operated with the Sausalito-Marin City Sanitary District. Within this joint system, the Discharger is responsible for approximately 25 miles of gravity sewer lines in the City of Sausalito. The Discharger's collection system serves a population of approximately 7,500 in Marin County, consisting primarily of residential customers as well as some light industrial/commercial users.

REQUIREMENTS APPLICABLE TO THE DISCHARGER

1. On May 2, 2006, the State Water Board adopted Statewide General Waste Discharge Requirements, Order No. 2006-0003 DWQ ("General WDR"), which prescribes Statewide General Waste Discharge Requirements for Sanitary Sewer Systems. The General WDR establishes minimum requirements to prevent SSOs from publicly owned and operated sanitary sewer systems. As owner of a collection system, the Discharger is required to comply with the requirements of the General WDR. The Discharger filed a Notice of Intent for coverage under the General WDR with the Regional Water Board on July 5, 2006. The effective date of the General WDR is July 27, 2006.
2. Prohibition C.1 of the General WDR states that any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.
3. 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 General WDR is not an NPDES Permit. The Discharger does not have an NPDES permit that authorizes the discharge of sewage spills.

ALLEGATIONS

1. The Discharger violated Prohibition C.1 of the General WDR, Section 301 of the Clean Water Act, and CWC Section 13376 by discharging a total of 31,045 gallons of untreated sewage to an unnamed creek that flows into Richardson Bay, a water of the State of California and a water of the United States, as a result of two SSOs that occurred from the period of July 7, 2008, through July 21, 2008, and on July 22, 2008, respectively. Both SSOs discharged from Manhole No. 310152 located between Toyon Lane and Woodward Avenue in Sausalito less than a mile from Richardson Bay. The details of these violations are set forth below.
2. An SSO is a discharge from a collection system of raw wastewater consisting of domestic wastewater as well as industrial and commercial wastewater, depending on the pattern of land uses in the area served by the collection system. 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 to ground waters. An SSO may pollute surface waters or ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters.

SSO that occurred from the period of July 7, 2008 through July 21, 2008:

3. According to the Discharger's service-call records, the Discharger was first notified of an SSO from Manhole No. 310152 on July 21, 2008, at approximately 1:50 p.m. The Discharger arrived at the SSO site at 2:40 p.m. the same day.
4. During the Discharger's inspection of the SSO site on July 21, 2008, the Discharger observed large amounts of "grey, matted material" and slime had discharged from Manhole No. 310152. The Discharger reported and certified in the California Integrated Water Quality System (CIWQS), the State Water Board's online reporting system that the SSO reached surface water, an unnamed creek that flows to Richardson Bay. The distance between where the SSO entered the unnamed creek and Richardson Bay is approximately 1,500 feet. The Discharger observed that the SSO had affected approximately 300 feet of the unnamed creek downhill from Manhole No. 310152 and saturated the surrounding hillside. Approximately 300 feet from Manhole No. 310152, the unnamed creek flows into a culvert under Woodward Avenue and Marie Street in Sausalito. The Discharger noted that the SSO had also flowed into this culvert.
5. On July 21, 2008, the Discharger determined that the SSO was caused by root blockage compounded by an "inordinate amount" of disposable cleaning rags in the sewer line downstream of Manhole No. 310152. The Discharger's maintenance crew hand-rodded the sewer line to break the roots and clear the blockage, and left the SSO site at 3:30 p.m.
6. Based on the Discharger's maintenance records that the line for Manhole No. 310152 at the SSO location had been reported as "running clear" on June 8, 2008, and phone call complaints the Discharger received about this SSO, the Discharger estimated the duration of the discharge at 14 days. The Discharger estimated the flow rate of the SSO by calculating the velocity of wastewater in the sewer line and the cross sectional area of flow of the sewer pipe (partially full pipe). Based on the calculated flow rate and the duration of the discharge, the Discharger estimated the SSO volume at 29,000 gallons. The Discharger recovered only five gallons of the SSO.

SSO that occurred on July 22, 2008:

7. According to the Discharger's service-call records, on July 22, 2008, the Discharger was first notified of another SSO from Manhole No. 310152 at approximately 12:30 p.m. The Discharger arrived at the SSO site at 1:30 p.m. the same day.

8. During the Discharger's inspection of the SSO site on July 22, 2008, the Discharger observed that the sewer line connected to Manhole No. 310152 was again blocked with roots and disposable rags. The Discharger also observed that the hillside adjacent to Manhole No. 310152 was still saturated with raw sewage from the SSO they had responded to the day before.
9. The Discharger reported and certified in CIWQS that the SSO reached surface water. This SSO also discharged into that unnamed creek that flows to Richardson Bay and affected approximately 300 feet of the unnamed creek downhill from Manhole No. 310152. The Discharger observed that sewage had pooled near Manhole No. 310150 located on private property between Toyon Lane and Woodland Avenue in Sausalito.
10. On July 22, 2008, the Discharger's maintenance crew cleared the sewer line by removing six disposable rags from the line, which were located approximately 10 feet from the overflowing manhole. The maintenance crew cleared the blockage shortly after 1:30 p.m. and completed a lengthier and more thorough rodding at 2:45 p.m. on the same day.
11. The Discharger estimated the SSO volume to be at least 2,250 gallons of undiluted, raw sewage. The Discharger rented a Vactor truck and recovered approximately 200 gallons of raw sewage by pumping it back from Woodward Avenue into the collection system.
12. On July 22, 2008, the Discharger took water samples from the unnamed creek at two locations: 100 feet upstream and 100 feet downstream of where the SSO entered the creek. The laboratory results of those samples detected total coliform levels greater than 2419.6 colonies per 100 ml. The Discharger was not able to gain access to the creek where it resurfaces downstream of the culvert located at Woodward Avenue and Marie Street in Sausalito. But the Discharger was able to access the unnamed creek at Easterby Avenue, less than 1,000 feet from Richardson Bay. The Discharger observed no visual evidence of an SSO, such as trash debris, in the water or along the banks of the unnamed creek; however, no soil or water samples were taken. Thus the Discharger could not determine whether the unnamed creek was affected by an SSO at this location.

WATER CODE PROVISIONS RELEVANT TO THESE DISCHARGES

1. Pursuant to CWC Section 13385(a), any person who violates CWC Section 13376 or any requirements of Section 301 of the Clean Water Act is subject to administrative civil liability pursuant to CWC Section 13385(c), 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.

2. If this matter is referred to the Attorney General for judicial enforcement, a higher civil liability in an amount not to exceed the sum of both of the following: (1) \$25,000 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 twenty-five dollars (\$25) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons, may be imposed by a superior court.
3. CWC Sections 13327 and 13385(e) require the Regional Water Board to consider several factors when determining the amount of administrative civil liability to impose. These facts include: "... the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup and abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in 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 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."

ALLEGED VIOLATIONS

1. The Discharger violated CWC Section 13385(a) (5) by discharging untreated waste water to the waters of the United States in violation of Section 301 of the Clean Water Act. As detailed above, untreated waste water was discharged to an unnamed creek that flows to Richardson Bay during the two SSO events that occurred on from July 7, 2008, through July 21, 2008, and on July 22, 2008, respectively.

CONSIDERATION OF FACTORS [CWC SECTIONS 13327 and 13385(e)]

1. In determining the proposed amount of civil liability to be assessed against the Discharger, the Regional Water Board's Prosecution Team considered the following factors, as required pursuant to CWC Sections 13327 and 13385(e):
 - 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.

2. The nature, circumstances, extent, and gravity of the violation or violations

Nature and Circumstances

July 7, 2008 to July 21, 2008 SSO

According to the Discharger's service-call records, the Discharger was first notified on July 21, 2008, of an SSO from Manhole No. 310152, which is located in a residential area that had been on-going for 14 days. The Discharger responded to the site within approximately 50 minutes of receiving notice of the SSO. The manhole is located on steep, hilly terrain on private property between Toyon Lane and Woodward Avenue in Sausalito. At this location, the sanitary sewer receives sewage from common private side sewer laterals from 40 homes. Over that 14-day period, approximately 29,000 gallons of raw, undiluted sewage discharged to an unnamed creek that flows into Richardson Bay, a water of the United States. The Discharger's investigation concluded that the SSO occurred as a result of a blockage caused by roots and disposable cleaning rags.

July 22, 2008 SSO

According to the Discharger's service-call records, the Discharger was notified on July 22, 2008, of another SSO from Manhole No. 310152. Approximately 2,250 gallons of raw, undiluted sewage discharged from Manhole No. 310152 to the unnamed creek that flows into Richardson Bay. The Discharger's investigation concluded that the sewer line had re-blocked with disposable cleaning rags in the same location that caused the SSO from July 7, 2008, through July 21, 2008.

Extent

July 7, 2008 to July 21, 2008 SSO

Based on maintenance records and service call records, the Discharger estimated the duration of the SSO at 14 days.

The precise spatial extent that the SSO affected is unknown because the Discharger did not take an adequate number of samples to determine the spatial and bacteriological impact of the SSO. The Discharger only took two water samples: (1) one hundred feet upstream and (2) on hundred feet downstream of where the SSO entered the unnamed creek. The Discharger's bacterial monitoring in the Creek 100 feet downstream from where the SSO entered, detected E. coli levels higher than 2419.6 colonies per 100 ml. The January 2007 San Francisco Bay Basin Water Quality Control Plan references an U.S. EPA maximum water quality criteria for E. coli of 576 colonies per 100 ml for water contact recreation in fresh water in an infrequently used area.

The hill above the unnamed creek bed from the overflow site to Woodward Avenue, located 300 feet downstream, was entirely saturated with sewage. Because the hill slope was saturated, it is reasonable to conclude that a portion of the SSO percolated into the soil on the hill slope and also discharged a short distance away into the unnamed creek. Thus, at a minimum, the extent of the impact in the unnamed creek was 300 feet downstream.

The Discharger estimated the SSO to be approximately 29,000 gallons with only five gallons recovered. The Discharger reported that there was no visual evidence of raw sewage in the unnamed creek downstream of the SSO site at Easterby Avenue, but it did not collect samples to verify this observation. Nevertheless, it is likely that a portion of the SSO traveled the less than one mile distance to Richardson Bay due to the 14-day duration of the discharge.

July 22, 2008 SSO

According to the Discharger's service-call records, the Discharger was notified at approximately 12:30 p.m. on July 22, 2008, of the SSO and stopped the discharge that same day at approximately 1:30 p.m. Thus, the temporal extent of this SSO was at least one hour.

As stated above, the precise spatial extent that the SSO affected is unknown because the Discharger did not take an adequate number of samples to determine the spatial and bacteriological impact of the SSO. Based purely on volume of the SSO, the spatial extent is less than the previous SSO. The Discharger estimated the SSO volume to be about 2,250 gallons. Because the hill slope was already saturated with sewage from the previous SSO, the spatial extent is assumed to be limited to the unnamed creek bed 300 feet down from the manhole. The sampling described above reflects the bacteriological impact to the Creek of both events.

Gravity

July 7, 2008 to July 21, 2008 SSO

Undiluted raw sewage discharged in a residential area for approximately 14 days during dry weather. Because the SSO was undiluted, it posed a higher threat to public health and water quality than a similar spill during wet weather. It is also likely the SSO affected beneficial uses of the unnamed creek; however, the Discharger did not conduct an investigation, or gather any water quality data, to evaluate impacts to beneficial uses. Although the beneficial uses of the unnamed creek are not currently specifically listed in the Basin Plan, the beneficial uses for inland surface water streams typically include, but are not limited to, groundwater recharge, wildlife habitat, cold freshwater habitat, warm freshwater habitat, fish migration, and fish spawning.

July 22, 2008 SSO

This SSO lasted for approximately one hour and the volume was significantly less than the previous SSO. The Discharger recovered 200 gallons of the estimated the 2,250-gallon SSO. The affect of this SSO was minimal because the location was already saturated with sewage from the previous SSO.

3. Whether the discharge is susceptible to cleanup or abatement

Because the July 7 to July 21, 2008, SSO flowed unabated for approximately 14 days before the Discharger was notified, the Discharger was not able to recover a significant volume of the SSO. The Discharger reported that an estimated five gallons were recovered. However, the Discharger also spent about two hours cleaning up the hillside, sending a crew of two to manually remove fecal matters and associated solid waste from the area between the manhole and the creek. For the July 22, 2008, SSO, the Discharger rented a Vactor truck and returned approximately 200 gallons to the collection system.

To stop both SSOs, the Discharger rodded the gravity sewer line to remove the root and rag blockages.

4. The degree of toxicity of the discharge

Both SSOs consisted of raw, untreated wastewater. Because the SSOs occurred during the middle of summer during dry weather, the discharges were not diluted by infiltration or inflow of storm water and groundwater into the sewer system.

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. 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.

5. The ability to pay and the effect on ability to continue in business

Based on the following, the Discharger is financially stable and has the financial resources to provide for debt service obligations and financial needs, including this proposed administrative civil liability.

The Discharger provided financial information including annual budgets and sewer rate fees to Regional Water Board Prosecution Team. The Discharger's primary sources of revenue are sewer service charges. The annual sewer-rate fees per equivalent dwelling unit ("EDU") were increased from \$215 for single-family dwellings in fiscal year 2008/2009 to \$360 in fiscal year 2009/2010 (a 67 percent increase). By fiscal year 2012/2013 the annual sewer rate fees will be increased to \$492 (a 37 percent increase from the current rates). The current rates are still below the average annual sewer rate fees for Marin County (\$444 per EDU).

Though the planned sewer fee increases is not entirely sufficient to ensure that adequate financial resources are available to implement its capital improvement program ("CIP"), the Discharger submitted an application in July 2009 for \$7.64 million in Federal Stimulus and State Revolving Fund loan funds in order to complete approximately \$1 million in capital improvements each year for the next 5 to 8 years. The Discharger expects to receive this award for the implementation of needed capital improvements.

In addition, the Discharger could raise its annual sewer rate fee by an additional \$2.08 per EDU (or \$0.17 per EDU per month) to raise sufficient funds to pay for a loan that would cover the proposed penalty (assuming an interest rate of five percent for 15 years).

6. Any voluntary cleanup efforts undertaken

The Discharger only recovered 205 gallons of the combined SSO volume of 31,250 gallons. For the July 22, 2008, SSO, the Discharger rented a Vactor truck and returned approximately 200 gallons of sewage to the collection system. For both SSOs, the Discharger cooperated with regulatory agencies, arrived on site promptly after notifications from the homeowner, and initiated clearing of the line immediately.

7. Any prior history of violations

Since May 2, 2007, through December 31, 2009, the Discharger has reported 50 SSOs to the State Water Board via the California Integrated Water Quality System ("CIWQS"). According to a U.S. EPA inspection conducted in August 2007, the Discharger averaged 57 SSOs per 100 miles of pipe per year for the period from 2005 to 2007. The 2007 U.S. EPA inspection uncovered that some of the SSOs that the Discharger self-recorded in 2007, were either not reported, under reported (i.e. the volume found on the Discharger's Service Call Form was higher than that reported on the CIWQS website), or reported late. The U.S. EPA inspection did not look at all

Service Call Forms and Official Inspection Reports, so it is unclear whether these types of discrepancies and/or practices are occasional or habitual¹.

The Discharger, together with the Sausalito-Marin City Sanitary District and the Tamalpais Community Services District, are required under U.S. EPA Order for Compliance, Docket No. CWA-309(a)-08-031 (“Order”) executed November 24, 2008 to implement a Sewage Spill Reduction Action Plan to reduce and eliminate collection system sewage spills. According to the Order, the Discharger must implement a Sewer System Cleaning and Root Control Program, to ensure regular cleaning of sewer pipes to reduce or eliminate blockages. The Discharger is currently in compliance with the tasks and deadlines set forth in the Order.

8. The degree of culpability

The Discharger is responsible for the proper operation and maintenance of its collection system. Based on the Discharger’s maintenance log for the sewer line that runs between manhole 310151 and manhole 310152, prior to the July 2008 SSOs addressed in this Complaint, the Discharger maintained the sewer line less than its recommended three-month frequency. Since July 2008, the Discharger has continued to service this sewer line less than the recommended three-month frequency. The Discharger, however, rodded the sewer line, on June 5, 2008 — 32 days prior to the July 2008 SSOs. The Discharger’s June 5, 2008, maintenance log indicates the maintenance crew observed “light debris” in the line and recommends routine maintenance three-months later.

On July 21, 2008, when the sewer line was rodded in response to the SSO, the Discharger found small amounts of roots and an “inordinate amount” of disposable rags in the line, but believed the sewer line was in good condition. The Discharger did not expect that the sanitary sewer line would re-block on the next day and at the same location. The blockage on July 22, 2008, was also caused by roots and disposable cleaning rags. A repeated reblocking of a sewer line, such as this, can occur when a rodding is not done thoroughly. The Discharger rodded the sewer line again on July 22, 2008. To date, no SSOs have occurred at that location.

9. The economic benefit or savings

The Discharger realized very little economic benefit or savings from the two SSOs addressed in this Complaint. Although the Discharger maintained the sewer line less than its recommended three-month frequency, the Discharger did perform routine maintenance at this “hot spot.” Rodding the sewer line more thoroughly on July 21, 2008, would have required about two hours of overtime for two sewer maintenance field workers, and likely would have prevented the recurrence of the SSO on July 22, 2008.

The economic savings associated with avoiding overtime pay are negligible.

¹ U. S. EPA Region 9 SSO Inspection Report, City of Sausalito, December 2007.

10. Other such matters as justice may require

Discharger's Actions:

The introduction of disposable cleaning rags in the sewer system, a result of customer behavior, compounded with roots in the line was the primary cause of both SSOs. As a result of these SSOs, the Discharger conducted outreach efforts to educate homeowners on what can be properly disposed of in the sewer. The Discharger contacted customers upstream of the SSO location, within the week following the July 22, 2008, SSO to educate them of what can be properly disposed of in the sewer. The Discharger also advised the customers that discarding of solids (i.e., disposable cleaning rags) that may cause flow obstructions is a violation of the City of Sausalito Municipal Code.

Additionally, the Discharger has now identified the area where the SSOs occurred as a hot spot for root obstructions and general maintenance issues, and is currently working on scheduling the replacement of this section of the sanitary sewer.

Staff Costs:

To date, Regional Water Board Prosecution Team has spent an estimated 153 hours to prepare the Complaint and supporting evidence. These hours are high in part because Regional Water Board's Prosecution Team spent many hours sifting through large volumes of documents submitted by the Discharger. For example, in response to a straight forward information request regarding the circumstances of the July SSOs, the Discharger submitted a lot of unnecessary documentation from which the relevant information had to be teased out. Based on an average cost to the State of \$150 per hour, the total staff cost is \$22,950. If this matter proceeds to hearing, the Regional Water Board Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this administrative civil liability complaint through hearing.

MAXIMUM CIVIL LIABILITY

The maximum administrative civil liability the Regional Water Board may impose pursuant to CWC Section 13385 for the violations alleged in this Complaint is **\$440,450** based on the following calculations:

Days of violation: Number of days of discharge that resulted from the two SSOs described herein:

[14 days (July 7–21, 2008) + 1 day (July 22, 2008)] x \$10,000/day/violation = \$150,000.

Volume of Discharge not cleaned up and that exceeds 1,000 gallons:

(29,000 gallons -1,000 gallons -5 gallons + 2,250 gallons - 1,000 gallons - 200 gallons) x \$10/gallon = \$290,450.

Total: $\$150,000 + \$290,450 = \underline{\$440,450}$.

PROPOSED CIVIL LIABILITY

The proposed civil liability is appropriate based on the following reasons:

Factors considered in increasing the penalty towards the maximum civil liability

1. The Discharger is responsible for the proper operation and maintenance of its sanitary sewer system.
2. The degree of toxicity of the SSOs is high as it consisted of full strength raw sewage and occurred over a 15-day period to a small creek in mid-summer when stream flows are typically low and have the least ability to assimilate any wastes.
3. The Discharger has a consistent history of SSO violations.

Factors considered in decreasing the penalty from the maximum civil liability

1. The Discharger made a conscientious effort to clean sewage debris from the hillside.
2. The maximum liability is high in part because of the number of days of violation, but the number of days of violation is high only because the Discharger was unaware of the problem until notified by a resident. The Discharger responded to the problem on the same day and within 50 minutes of the notification.
3. The SSOs were caused in part by customer behavior (illegal disposal of cleaning rags in the sewer system).
4. After the SSOs occurred, the Discharger conducted extensive educational outreach to residents to educate them about not throwing objects into the sanitary system, and to make customers aware of the City of Sausalito ordinance which prohibits the same.

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.

January 21, 2010
Date

Dyan C. Whyte
Assistant Executive Officer

Attachment: Waiver of Hearing

WAIVER FORM FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent the City of Sausalito (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R2-2009-0057 (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

☐ **OPTION 1: PAY THE CIVIL LIABILITY**

(Check here if the Discharger waives the hearing requirement and will pay the civil liability in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **\$75,300** by check that references "ACL Complaint No. R2-2009-0057" made payable to the "San Francisco Bay Regional Water Quality Control Board." Payment must be received by the Regional Water Board February 22, 2010, or the Regional Water Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source (excluding the Regional Water Board Prosecution Team) during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board or its Executive Officer, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

☐ **OPTION 2: REQUEST A TIME EXTENSION**

(Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)

I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the Complaint. By checking this box, the Discharger requests that the Regional Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Water Board Advisory Team to approve the extension.

☐ **OPTION 3: ENGAGE IN SETTLEMENT DISCUSSIONS**

(Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)

I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the Complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will contact the Regional Water Board Prosecution Team within five business days of submittal of this waiver to request that the Prosecution Team engage in settlement discussions to attempt to resolve the outstanding violation(s). As part of a settlement discussion, the Discharger may propose a supplemental environmental project to the extent such a project is authorized by law. By checking this box, the Discharger requests that the Regional Water Board Advisory Team delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board Advisory Team to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1c and d."

(Print Name and Title)

(Signature)

(Date)