

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0543

IN THE MATTER OF
PLACER COUNTY FACILITY SERVICES DEPARTMENT
AND
CITY OF ROSEVILLE
PLACER COUNTY

This Complaint is issued to the Placer County Facility Services Department (Placer County) and the City of Roseville (Roseville) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that Placer County violated provisions of the State Water Resources Control Board Order No. 2006-0003-DWQ. This Complaint is also based on findings that Roseville violated provisions of Waste Discharge Requirements Order No. 5-00-164 (NPDES No. CA0079502).

The Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) finds the following:

Placer County

1. On 2 May 2006, the State Water Resources Control Board (State Water Board) adopted Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems.
2. Placer County owns and operates the Placer County Service Area 28 Zone 173 wastewater collection system that serves the unincorporated communities west of the City of Roseville.
3. Placer County is required to operate and maintain its sewage collection system to prevent sanitary sewer overflows and spills in compliance with requirements of State Water Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems.
4. Placer County owns and operates a 14,000-foot long sewer force main connecting a lift station near the intersection of Walerga Road and PFE Road to the City of Roseville's Dry Creek Wastewater Treatment Plant (WWTP). The lift station pumps sewage to the WWTP. There is one isolation valve in the force main, approximately 7,100 feet from the Dry Creek WWTP.
5. On 1 December 2007, a contractor working on behalf of the Roseville Unified School District, ruptured Placer County's force main. According to a hydraulic model provided to Regional Water Board staff after the spill, approximately 461,400 gallons of sewage flowed from the force main, of which approximately 104,400 gallons were recovered and

357,000 gallons were discharged into Dry Creek, a water of the United States.

6. Placer County and Roseville did not perform adequate planning that would address how the two entities would coordinate in the event that the construction project would cause a release of sewage from Placer County's force main.
7. The discharge of untreated sewage to a water of the United States is a violation of State Water Board Order No. 2006-0003-DWQ Prohibition C.1.
8. CWC section 13376 states, in part, the following: *"Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States...shall file a report of the discharge in compliance with the procedures set forth in Section 13260.... The discharge of pollutants...except as authorized by waste discharge requirements [NPDES permit]...is prohibited...."*
9. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and CWC section 13376 prohibit discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.
10. State Water Board Order No. 2006-0003-DWQ is not an NPDES permit. Therefore, by failing to file a report of waste discharge as set forth in CWC section 13260 and failing to obtain an NPDES permit prior to the discharges described in the above Findings, Placer County violated CWC section 13376.

Roseville

11. The City of Roseville owns and operates the Dry Creek WWTP, which provides sewerage service for Roseville and unincorporated portions of Placer County.
12. On 16 June 2000, the Regional Water Board adopted Waste Discharge Requirements Order No. 5-00-164 (NPDES No. CA0079502) to regulate the discharge of wastewater from the Dry Creek WWTP to Dry Creek.
13. Waste Discharge Requirements Order No. 5-00-164 Discharge Prohibitions No. A.1 states the following: *"Discharge of wastewater at a location or in a manner different from that described in the Findings is prohibited."*
14. Waste Discharge Requirements Order No. 5-00-164 Discharge Prohibitions No. A.2 states, in part, the following: *"The by-pass or over flow [sic] of wastes to surface waters is prohibited, except as allowed by Standard Provision A.13."*
15. During the spill event on 1 December 2007, wastewater flowed through the Dry Creek WWTP site, downhill (upstream) through the force main, out the break in the force main, and into Dry Creek.

16. The discharge violated Discharge Prohibitions A.1 and A.2 of Waste Discharge Requirements Order No. 5-00-164 when sewage flowed through the Dry Creek WWTP site to the broken force main and into Dry Creek. As a result of inadequate planning, Roseville did not close the isolation valve at the Dry Creek WWTP for approximately three hours following the force main break, allowing 460,000 gallons of sewage to flow backwards, from the Dry Creek WWTP, downhill (upstream) through the force main, out the break in the force main, discharging approximately 357,000 gallons of raw sewage into Dry Creek.

Regulatory Considerations

17. CWC section 13385 states, in part:

“(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(2) Any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.”

“(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 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.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but 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.”

18. Pursuant to CWC section 13385, the maximum monetary penalty the Regional Water Board may administratively assess for the discharge is \$3,570,050, calculated as follows:

$\$10,000/\text{day} \times 1 \text{ day} + \$10/\text{gallon} \times (357,005 \text{ gallons spilled, but not cleaned up} - 1,000 \text{ gallons})$

19. CWC section 13385(e) states: *“In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account 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, and, with respect to the violator, the ability to pay, the effect on its 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. 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."

20. Regional Water Board staff did not have adequate information to accurately calculate the economic benefit derived from the acts that constitute the violation. Placer County and Roseville would have gained economic benefits from the discharge, including deferred costs of installing additional isolation valves in the force main and preparing an adequate spill response plan, and avoided costs of properly supervising the excavation and implementing an adequate spill response plan. The economic benefit is estimated to be less than the ACL amount.
21. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

PLACER COUNTY FACILITY SERVICES DEPARTMENT AND THE CITY OF ROSEVILLE ARE HEREBY GIVEN NOTICE THAT:

1. Administrative Civil Liability Complaint No. R5-2008-0530 is rescinded.
2. The Assistant Executive Officer of the Regional Water Board charges Placer County Facility Services Department and the City of Roseville collectively with administrative civil liability in the amount of **one hundred twenty-six thousand dollars (\$126,000)**.
3. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **11/12 September 2008**, unless both Placer County Facility Services Department and the City of Roseville agree to complete the following by **27 July 2008**:
 - a. Waive the hearing by completing the attached form and returning it to the Regional Water Board; and
 - b. Pay the proposed civil liability of **one hundred twenty-six thousand dollars (\$126,000)** in full.
4. If a hearing on this matter is held, the Regional Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability

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PLACER COUNTY

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JACK E. DEL CONTE, Assistant Executive
Officer

27 June 2008

WSW: 24 June 2008

WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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

1. We are duly authorized to represent Placer County Facility Services Department and the City of Roseville (hereinafter collectively referred to as "Dischargers") in connection with Administrative Civil Liability Complaint No. R5-2008-0543 (hereinafter the "Complaint");
2. We are informed of the right provided by California Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of service of the Complaint;
3. We hereby waive the Dischargers' right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of service of the Complaint; and
4. We certify that the Dischargers will remit payment for the civil liability imposed in amount totaling **one hundred twenty-six thousand dollars (\$126,000)** by check or checks, which contain a reference to "ACL Complaint No.R5-2008-0543" and are made payable to the "*State Water Pollution Cleanup and Abatement Account.*"
5. We understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Regional Board receive new information during this comment period, the Regional Board may withdraw the complaint, return payment, and issue a new complaint.
6. We 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 Dischargers to further enforcement, including additional civil liability.

(Name of Placer County Representative)

(Name of Roseville Representative)

(Title of Placer County Representative)

(Title of Roseville Representative)

(Signature of Placer County Representative)

(Signature of Roseville Representative)

(Date)

(Date)