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Agency Secretary

California Regional Water Quality Control Board Central Valley Region

Robert Schneider, Chair



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19 December 2005

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Acting Division Manager
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CITY OF MODESTO, WATER QUALITY CONTROL FACILITY (WQCF), MODESTO, STANISLAUS COUNTY - ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2005-0529

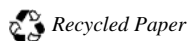
Enclosed is an Administrative Civil Liability Complaint issued by the Executive Officer of the Central Valley Regional Water Quality Control Board (Regional Water Board) pursuant to Section 13385 of the California Water Code for violations of Waste Discharge Requirements (WDRs) Order No. 5-01-120 (NPDES No. CA0079103) by the City of Modesto (Discharger). The Complaint proposes an administrative civil liability of **\$152,000** for the 12-13 October 2004 overflow of raw sewage to Dry Creek.

Pursuant to California Water Code Section 13323, the Discharger may either choose to pay the civil liability and waive a hearing before the Regional Water Board on the matter or choose to contest the Complaint and proceed to a hearing. If the Discharger chooses to waive the right to a hearing, a duly authorized person must sign the waiver and submit it to this office, along with a check payable to the "State Water Resources Control Board Cleanup and Abatement Account" in the full amount of the civil liability. Any waiver will not be effective until 30 days from the date of this Complaint to allow other interested persons to comment on this action. If the Regional Water Board does not receive a waiver and a check for the full amount of \$152,000 by **18 January 2006**, a hearing will be scheduled at the

16 and 17 March 2006 Regional Water Board Meeting in Sacramento. Additionally, the Executive Officer may decide to schedule the Complaint for a hearing consistent with California Water Code Section 13323(b). If the Discharger intends to proceed to hearing on this matter, it must submit written comments and evidence to the Regional Water Board, attention: Jon Ericson, by **18 January 2006**.

Persons wishing to submit comments on this action should submit written comments within 30 days from the date of this letter to the Regional Water Board, attention: Jon Ericson.

California Environmental Protection Agency



If you have any questions or comments, please contact Jon Ericson at (916) 464-4660 or Greg Vaughn at (916) 464-4742.

THOMAS R. PINKOS
Executive Officer

Enclosure

cc:

Mr. Douglas Eberhardt, U.S. Environmental Protection Agency, Region IX, WTR-5, San Francisco
U.S. Army Corps of Engineers, Sacramento
U.S. Fish & Wildlife Service, Sacramento
National Marine Fisheries Service, Sacramento
Ms. Frances McChesney, State Water Resources Control Board, OCC, Sacramento
Mr. Mark Bradley, State Water Resources Control Board, OSI, Sacramento
Mr. Bill Hereth, State Water Resources Control Board, CWP, Sacramento
Mr. Philip Isorena, Division of Water Quality, State Water Resources Control Board, Sacramento
Department of Health Services, Office of Drinking Water, Sacramento
Department of Health Services, Office of Drinking Water, Stockton
Department of Health Services, Environmental Management Branch, Sacramento
Department of Fish and Game, Region IV, Fresno
Mr. James Starr, Department of Fish and Game, Stockton
Department of Water Resources, Central District, Sacramento
Department of Water Resources, Fresno
Stanislaus County Planning Department, Modesto
Stanislaus County Environmental Health Department, Modesto
Stanislaus County Department of Environmental Resources, Modesto
California Urban Water Agencies, Sacramento
Central Delta Water Agency, Stockton
Contra Costa Water District, Concord
Delta Protection Commission, Walnut Grove
South Delta Water Agency, Stockton
Delta Keeper, Stockton
Ms. Allison Boucher, Friends of the Tuolumne, Ceres
Mr. Mike Mooney, Modesto Bee, Modesto

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2005-0529

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

CITY OF MODESTO
WATER QUALITY CONTROL FACILITY
STANISLAUS COUNTY

This complaint is issued to the City of Modesto (hereafter referred to as Discharger) based on a finding of violations of Waste Discharge Requirements (WDRs) Order No. 5-01-120 (NPDES No. CA0079103) and/or violation of California Water Code (CWC) Sections 13264 and 13376 pursuant to CWC Section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC Section 13323, which authorizes the Executive Officer to issue this complaint.

The Executive Officer of the Regional Water Quality Control Board, Central Valley Region (Regional Water Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger owns and operates the City of Modesto Water Quality Control Facility (WQCF) and accompanying collection, treatment and disposal systems, which provides sewerage service to the City of Modesto, Empire Sanitary District, and a portion of the City of Ceres. The primary disposal option for treated municipal wastewater is via land reclamation, through irrigation of fodder, fiber, or seed crops and pasture irrigation for non-milking animals. Excess wastewater volume is stored in on-site impoundments for seasonal discharge (October through May) to the San Joaquin River, a water of the United States.
2. On 11 May 2001, the Regional Water Board adopted WDRs Order No. 5-01-120 (NPDES No. CA0079103) to regulate discharges of wastewater from the WQCF. The Discharger owns and maintains approximately 470 miles of pipeline for the collection of raw sewage and conveyance to the treatment facilities.

Raw Sewage Spill

3. The Discharger reported that from 12-13 October 2004 1,198,314 gallons of raw sewage overflowed from the Discharger's sanitary sewer collection system to a surface water body, Dry Creek, in Stanislaus County. Dry Creek is a water of the United States which flows into the Tuolumne River, also a water of the United States, near Highway 99 in Modesto. The raw sewage overflow and discharge to Dry Creek resulted after a pressure manhole plate was dislodged from a pressurized sewer line. The pressure plate failure was initially reported as suspected vandalism. The sewage combined with ambient flows in Dry Creek and was not amenable to clean-up. The overflow also resulted in the erosion of the creek bank and discharge of sediment into the Creek.

4. The sewage overflow occurred in a remote location near Thousand Oaks Trail in back of the Creek Side Golf Course in Modesto. The overflow was discovered by a jogger who notified City Parks staff, who in turn notified City Public Works staff on the morning of 13 October 2004. According to the Discharger, the sewage overflow likely started at 8:05 pm on 12 October 2004, and continued until 9:35 am on 13 October 2004 when the Discharger was able to shut off the flow through the compromised sewer line. The pumping station which pressurizes the sewer line where the pressure plate was located (Scenic Drive pumping station) was equipped with numerous alarms including low wet well and pump failure alarms. According to the Discharger, these alarms were ineffective in providing early notification of the overflow condition as the sewage was likely gravity feeding out of the dislodged pressure plate at the same rate as the incoming volume of sewage to the pumping station wet well.
5. Once the overflow was identified, the Discharger did provide timely initial notification to the California Office of Emergency Services and other state and local agencies including the Regional Water Board. The City also issued a press release soon after the overflow was discovered. Regional Water Board staff responding to the scene on 13 October 2004 noted significant Discharger resources responding to the incident. The Discharger removed standing sewage along the Creek bank with vacuum trucks, and applied a disinfectant to soil impacted by the spill. The Discharger initiated a sampling program to assess impacts of the overflow on surface waters, and requested Regional Water Board staff input on this effort and follow-on sampling requirements. The Discharger conducted a public notification process for residents living in local neighborhoods, and posted bi-lingual warning signs along the Creek from Claus Road west to the Tuolumne River and beyond Highway 99.
6. During the pressure plate repair process, the Discharger found all but one of the twelve bolts used to hold the force pressure plate in place were broken off. The remaining bolt was partially backed out of the plate. The Discharger considered this situation unusual and suspicious, and contacted the City of Modesto Police Department to conduct an investigation. This subsequent investigation included a metallurgical evaluation of several of the stainless steel pressure plate retaining bolts that were recovered from the scene. This evaluation concluded that the tested bolts failed as a result of corrosion fatigue. This report suggests the overflow was not due to an act of vandalism, an act by a third party which could not have been prevented or avoided by the exercise of due care or foresight. Rather, while the spill was unintentional, this report indicates the cause was a structural failure within the collection system. The Discharger received this report on 18 January 2005. The findings of the police investigation and metallurgical evaluation regarding the retaining bolts were distributed throughout various City of Modesto departments. However, these findings were not communicated to Regional Water Board staff until 1 July 2005, after a news reporter contacted Regional Water Board staff and informed them of the existence of this report.

7. WDR Order No. 5-01-120 Prohibition No. A.3. states: *“The by-pass or overflow of wastes to surface waters is prohibited, except as allowed by Standard Provision A.13. (See attached “Standard Provisions and Reporting Requirements for Waste Discharge Requirements (NPDES)”* The raw sewage overflow to Dry Creek was the result of a collection system failure and not an unavoidable bypass as described by Standard Provision A.13.
8. WDR Order No. 5-01-120 Provision E.2. states: *“Neither the discharge nor its treatment or disposal shall create a nuisance or pollution as defined in Section 13050 of the California Water Code.”* The discharge of raw sewage to Dry Creek caused a condition of pollution in Dry Creek altering the quality of the waters of the State to a degree that beneficial uses were affected including impacts on aquatic life and exclusion of the creek for contact recreation.
9. Standard Provisions, General Provision A.6. states: *“The Discharger shall at all times properly operate and maintain all facilities, and systems of treatment and control including sludge use and disposal facilities (and related appurtenances) that are installed or used to achieve compliance with this Order.”* The overflow of raw sewage to Dry Creek resulted from a dislodged pressure plate. Results of a metallurgical evaluation of several of the stainless steel pressure plate retaining bolts that were recovered from the scene concluded that the tested bolts failed as a result of corrosion fatigue.
10. CWC Section 13193, Sanitary sewer system overflow reports, states in part:

“(b)(1) The cause of the overflow. The cause shall be specifically identified, unless there is an ongoing investigation, in which case it shall be identified immediately after completion of the investigation...” The Discharger received the bolt testing report on 18 January 2005. The findings of the police investigation and metallurgical evaluation regarding the retaining bolts were not communicated to Regional Water Board staff until 1 July 2005, after a third party notified Regional Water Board staff of this report.
11. 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...issued pursuant to this chapter...*

 - (5) Any requirements of Section 301, 302, 306, 307,308, 318, 401, or 405 of the Clean Water Act, as amended.*

(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.

(e) 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.”

12. The maximum administrative civil liability which can be imposed by the Regional Water Board under CWC Section 13385 is \$11,983,140 [\$10,000 for each day of violation (\$10,000 times 1 day) plus \$11,973,140 (\$10 times (1,198,314 gallons – 1000 gallons)].
13. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, *et. seq.*), in accordance with Title 14 California Code of Regulations, Enforcement Actions by Regulatory Agencies, Section 15321(a)(2).

THE CITY OF MODESTO IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Water Board proposes to assess Administrative Civil Liability in the amount of **one hundred fifty two thousand dollars (\$152,000)**. The amount of the liability proposed is based upon a review of the factors cited in CWC Section 13385 and the State Water Resources Control Board’s Water Quality Enforcement Policy.
2. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **16-17 March 2006**, unless the Discharger agrees to:
 - a. Waive the hearing and pay the proposed civil liability in full; or
 - b. Waive the right to a hearing in 90 days, and submit a settlement proposal within 30 days of the date of this Complaint that could include an agreement to conduct a Supplemental Environmental Project (SEP) and also includes payment of

monetary liability. The Discharger may preserve its right to a hearing pending approval of the settlement proposal.

3. 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.
4. The Discharger may waive the right to a hearing. If you wish to waive the hearing, **within 30 days of the date of this complaint**, sign and return the waiver to the Regional Water Board's office with a check in the amount of the civil liability made payable to the "State Water Resources Control Board Cleanup and Abatement Account." Any waiver will not be effective until 30 days from the date of this complaint to allow interested persons to comment on this action.

THOMAS R. PINKOS, Executive Officer

Date

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent the City of Modesto (hereinafter known as “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2005-0529 (hereinafter the “Complaint”);
2. I am informed of the right provided by California Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger’s right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and
4. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **\$152,000** by check, which contains a reference to “ACL Complaint No. R5-2005-0529” and is made payable to the “*State Water Resources Control Board Cleanup and Abatement Account.*”
5. I understand the payment of the above amount constitutes a settlement of violations alleged in the Complaint that will not become final until after a public comment period.
6. I understand that the Executive Officer has complete discretion to modify or terminate this settlement.
7. 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.

(Print Name and Title)

(Signature)

(Date)