

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2007-0016

ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF  
SANITARY SEWER OVERFLOW  
CITY OF PACIFICA  
SAN MATEO COUNTY

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

1. The City of Pacifica (hereinafter "Discharger"), has violated provisions of law for which the Water Board may impose civil liability pursuant to California Water Code ("CWC") Section 13385(a)(2), and Section 13323. This Complaint proposes to assess \$190,000 in penalties for the violations cited. The deadline for comments on this Complaint is July 6, 2007, 5 p.m.
2. On September 15, 1999, the Water Board adopted Order No. 99-066 (NPDES Permit No. CA 0038776) for the Discharger, to regulate discharges of waste from the Discharger's Calera Creek Water Recycling Plant (Water Recycling Plant). The Water Recycling Plant provides tertiary treatment of wastewater from the city. Treated wastewater is discharged via a cascade aerator to Calera Creek, a water of the State. From the point of discharge, Calera Creek flows approximately 0.52 miles to the Pacific Ocean through a restored wetland.
3. Order No. 99-066 includes the following requirements:
  - a. *Discharge Prohibition A.2*  
  
*"The bypass or overflow of untreated or partially treated wastewater to waters of the State, either at the treatment plant or from the collection system or pump stations tributary to the treatment plant, is prohibited."*
  - b. *General Provision A.1 of Standard Provisions and Reporting Requirements (August 1993)*  
  
*"Neither the treatment nor the discharge of pollutants shall create a pollution, contamination, or nuisance as defined by Section 13050 of the California Water Code."*
4. On December 3, 2005, the Rockaway Beach Pump Station (Pump Station) failed, resulting in the discharge of approximately 253,000 gallons of raw sewage from the Discharger's collection system to Calera Creek and the Pacific Ocean. This sanitary sewer overflow (SSO) put the Discharger in violation of Discharge Prohibition A.2 of Order No. 99-066. Also, the Discharger violated General Provision A.1 because the SSO created a condition of nuisance on Rockaway Beach.
5. Unless waived, the Water Board will hold a hearing on this Complaint at its August 8, 2007, 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 the civil liability. An agenda for the meeting will be mailed to the Discharger not less than 10 days before the hearing date. The deadline to submit all written comments and evidence concerning this Complaint is specified in Finding 1. Any written comments and evidence not so submitted will not be considered by the Water Board.

6. At the hearing, the 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.

### ALLEGATIONS

7. This Complaint is based on the following facts:
  - a. An SSO of 253,000 gallons occurred at a pump station (a component of the sewage collection system) that was undergoing repairs: On December 3, 2005, the Discharger's Pump Station, located near Rockaway Beach in Pacifica, malfunctioned while undergoing repairs resulting in an SSO. The SSO flowed from the Pump Station and two manholes through a series of wetlands, into Calera Creek and ultimately into the Pacific Ocean. Calera Creek and the Pacific Ocean are both waters of the State. The manholes are part of the Discharger's collection system, which is comprised of the pipes, pump stations, sewer lines and other conveyances, used to collect and convey wastewater to its wastewater treatment facility. The Pump Station pumps sewage to the wastewater treatment facility. The SSO started at 11:45 p.m. and ceased at approximately 8:00 a.m. the following day. The Discharger calculated the SSO volume at approximately 253,000 gallons based on observed manhole overflow rates and the duration of the SSO.
  - b. The SSO traveled through two wetlands before reaching Calera Creek: From the Pump Station and manholes, the SSO flowed first into a constructed storm water treatment wetland (storm water wetland) and then into the wetland adjacent to Calera Creek (Calera Creek wetland). From there, the SSO entered Calera Creek. From the point the SSO entered the Calera Creek wetland, it had entered waters of the State. The SSO flowed approximately 100 yards through both wetlands and then into Calera Creek before it discharged into the Pacific Ocean at the northern end of Rockaway Beach. The Discharger estimated that the SSO took four to five hours to reach the Ocean from the initial entry point into the storm water wetland.

Pursuant to Water Board Resolution No. 94-102, entitled, "Policy on the Use of Constructed Wetlands for Urban Runoff Pollution Control," the storm water wetland is not a water of the United States or State, as it is a waste treatment system for urban runoff. Therefore, there are no associated beneficial uses for the storm water wetland.
  - c. The Discharger arrived within minutes of the SSO, and began its attempt to stop the SSO: Immediately after the Pump Station failed, the Discharger's Supervisory Control and Data Acquisition (SCADA) alarm system notified the Discharger's standby operator who arrived at the scene at approximately 12:00 a.m. on December 4, 2005 (fifteen minutes after the SSO began). Meanwhile, the sewage overflowed from the pump well and rose three feet above the floor within the Pump Station, inundating and short circuiting the instrumentation, control panel, and pump motors. The outward pressure from the accumulated sewage bulged out the Pump Station doors making it impossible for the Discharger to gain access. At approximately 12:20 a.m., the Discharger closed the valve connecting the Pump Station to the force main in order to gain access to the Pump Station. This caused sewage to backup and overflow out of the two lowest elevation manholes located near the Pump Station. After some of the sewage had drained through the

Pump Station doors and subsided down by a foot, the Discharger was able to open the doors and gain entry.

- d. The Discharger identified the cause of the SSO—it was a plumbing connection (between the force main sewage line and the pumping system) that had come loose: At approximately 12:45 a.m. on December 4, 2005, the Discharger began the cleanup of the Pump Station by pumping out the sewage in the dry well into the wet well. At that point, the Discharger's staff discovered that the makeshift rigging that was supporting the check valve assembly (a part of a pump that had been undergoing repairs) had slipped off. This failure, in turn, caused the coupling on this assembly to detach from the main pump manifold. With the coupling now loose, sewage had poured from the force main into the Pump Station.

The week before, the Discharger had removed one of the three pumps within the Pump Station for a planned replacement. With the pump removed, the Discharger used rope to support the check valve assembly and coupling. However, the coupling was not designed to be held in place without the pump present and the rigging—the only security holding the assembly in place—failed. After discovering the cause of the mechanical failure, the Discharger installed a new coupling with more secure rigging and a brace.

- e. The Discharger called in contractors to help stop the SSO by repairing the Pump Station: The Discharger brought on an electrical contractor at approximately 2:00 a.m. on December 4, 2005, to help get the Pump Station back online. The contractor arrived on the scene approximately two hours later and assessed the situation. Additional contractor electricians arrived on site at approximately 6:00 a.m. The Discharger and the electricians proceeded to clean up and repair the instrumentation, control panel, and pump motors of the Pump Station and were able to get one pump operational by approximately 8:00 a.m. Since the one pump was able to accommodate all flows to the Pump Station, the SSO stopped at approximately 8:00 a.m. on December 4, 2005.
- f. As soon as it successfully repaired the Pump Station, the Discharger performed cleanup activities, which included power washing, vacuuming, and debris removal from the storm water wetland: After the SSO stopped, the Discharger immediately began cleanup of the storm water wetland area and street. The Discharger used a Vac-Con sewer combination cleaning truck to power wash the street using chloraminated fire hydrant water whereby the street wash water entered the storm water wetland. The Discharger spray washed the wetland vegetation and vacuumed the wash water from the storm water wetland (a treatment wetland and not waters of the State), thereby preventing the wash water from this part of the cleanup activities from draining into the Calera Creek wetland (a water of the State). In addition, the Discharger recovered approximately 1,000 gallons of sewage and raked up sewage debris from the storm water wetland.
- g. Because of inaccessibility, the Discharger spray washed the vegetation in the Calera Creek wetland that could be reached from its perimeter: Since most of the sewage debris had deposited in the storm water wetland, very little sewage debris entered the Calera Creek wetland. In addition, access to the Calera Creek wetland was limited due to available roads. Therefore, to assist in restoring the Calera Creek wetland to pre-SSO conditions and flush the SSO residue into Calera Creek, the Discharger spray washed the vegetation in the Calera Creek wetland from the perimeter access road. However, due to the limited access, the Discharger was not able to vacuum the wash water from the Calera Creek wetland after spray washing the vegetation and allowed the wash water to discharge into Calera Creek and the Pacific Ocean.
- h. The SSO resulted in a precautionary beach closure: The Discharger posted beach closure signs for Rockaway Beach on the morning of December 4, 2005, at approximately 8:00 a.m. as part of

its normal response procedures for SSOs to a beach area. These signs were posted at all five entrances to Rockaway Beach.

- i. The Discharger reported the SSO to the State Office of Emergency Services (OES): At approximately 8:30 a.m. on December 4, 2005, the Discharger called OES to report the SSO. In addition, the Discharger reported the SSO to the Water Board's SSO electronic reporting system on December 5, 2005.
- j. Water samples taken in the receiving waters showed high bacteria levels: The Discharger collected water samples at approximately 3:00 p.m. on December 4, 2005, from the discharge end of the Calera Creek wetland area (a point just prior to where Calera Creek drains onto Rockaway Beach and into the Pacific Ocean) and from the surf zone approximately 30 yards north and south of the discharge point into the Pacific Ocean. The Discharger collected water samples for eight consecutive days at these three locations (December 4<sup>th</sup> to December 11<sup>th</sup>) and analyzed for total and fecal coliform. The samples collected on December 4<sup>th</sup> and December 5<sup>th</sup> indicated elevated bacteria levels above applicable single sample bacteria standards for water contact recreation. The remaining samples collected on December 6<sup>th</sup> through December 11<sup>th</sup> indicated lower bacteria levels that were all below the applicable single sample bacteria standards for water contact recreation.
- k. Rockaway Beach remained closed for eight days: The San Mateo County Health Department (County) collected ocean water samples at Rockaway Beach on December 4, 5, and 7, 2005. Similar to the Discharger's water samples, the ocean water samples for December 4<sup>th</sup> and 5<sup>th</sup> contained levels above the bacteria standards for water contact recreation. The County's December 7<sup>th</sup> water sample contained non-detect bacteria levels. This would have allowed the beach to open. However, because it was not available until two days later, on a Friday, when the County's offices were closed, Rockaway Beach was not reopened until Monday, December 12<sup>th</sup>.
- l. Discharge Prohibition A.2 of Order No. 99-066 prohibits, "the bypass or overflow of untreated or partially treated wastewater to waters of the State, either at the treatment plant or from the collection system or pump stations tributary to the treatment plant."
- m. The Discharger discharged 253,000 gallons of diluted raw sewage into the Calera Creek wetland, Calera Creek and the Pacific Ocean, all waters of the State, on December 3 and 4, 2005, in violation of Discharge Prohibition A.2 of Order No. 99-066.
- n. General Provision A.1 of Standard Provisions and Reporting Requirements of Order No. 99-066 prohibits the discharge of pollutants that creates a nuisance.
- o. CWC Section 13050(m) defines "nuisance" as:
  - "Anything that meets all of the following requirements:
    - i. Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
    - ii. Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal.
    - iii. Occurs during, or as a result of, the treatment or disposal of wastes."

- p. The December 3 and 4, 2005, SSO occurred while conveying the waste for treatment at the Discharger's Water Recycling Plant, and resulted in the closure of Rockaway Beach - a regularly used recreational area - for eight days. Therefore, the SSO fits the CWC definition of nuisance, and the Discharger thus violated General Provision A.1 of Standard Provisions and Reporting Requirements of Order No. 99-066.

### PROPOSED CIVIL LIABILITY

8. For violating CWC Section 13385(a)(2), the 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 both the following:
- \$10,000 for each day in which a violation occurred; and
  - \$10 for each gallon of discharge that is not susceptible to cleanup or is not cleaned up in excess of 1,000 gallons.

If this matter is referred to the Attorney General for judicial enforcement, a higher liability of \$25,000 per day of violation and \$25 per each gallon of discharge that is not susceptible to cleanup or is not cleaned up in excess of 1,000 gallons may be imposed.

The maximum administrative civil liability the Water Board may impose for the violations is \$10,000 times 2 days plus \$10 times 252,000 gallons or \$2.5 million.

9. In determining the amount of civil liability to be assessed against the Discharger, the Water Board must take into consideration the factors described in CWC Section 13385(e). 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 savings, if any, resulting from the violation, and
- Other such matters as justice may require.

#### Nature, Circumstance, Extent and Gravity of the Violations

The sanitary sewer overflow (SSO) could have been avoided had the Discharger been more careful in securing its check valve assembly and manifold during a scheduled pump repair.

The gravity of the violation is significant because of the large volume of the SSO (253,000 gallons) and the fact that the discharge was untreated. The discharge impacted beneficial uses of three receiving water areas: the Calera Creek wetland, Calera Creek, and the Pacific Ocean at Rockaway Beach. Since the storm water wetland is designed to provide treatment to storm water runoff, the SSO did receive some treatment before entering the Calera Creek wetland, Calera Creek and the Pacific Ocean. This is supported by the lack of sewage debris on Rockaway Beach after the SSO. However, the storm water wetland was not designed to remove the levels of pollutants in the SSO;

untreated municipal wastewater has much higher pollutant concentrations than does storm water runoff.

The SSO impacted both the noncontact and contact water recreation beneficial uses of the Pacific Ocean at Rockaway Beach for eight days. Activities such as beachcombing, sightseeing, aesthetic enjoyment, surfing, and fishing and other such uses were not possible because of the closure.

However, it was not the Discharger's fault that the beach remained closed for as long as it did. Had the County's offices been open on Fridays, the Discharger would have been notified on Friday that Rockaway Beach could be reopened. Instead, it was not until Monday when the beach reopened.

The SSO also adversely affected the beneficial uses of Calera Creek and the Calera Creek wetland. Water samples collected from a point just prior to where Calera Creek drains into the Pacific Ocean had elevated levels of bacteria. Though the Discharger did not collect water samples upstream of this sample point, it is likely that the bacteria levels upstream were as high as, or higher than, the bacteria levels in the water samples that were collected downstream. This is because bacteria levels are higher closer to the source than away from the source. Therefore, the noncontact water recreation beneficial uses of Calera Creek and the Calera Creek wetland were affected. The extent to which Calera Creek and the Calera Creek wetland were affected is unknown as the Discharger did not collect water samples from these two locations.

#### Susceptibility of the Discharge to Cleanup or Abatement

The Discharger's immediate response activities focused on making repairs to the Pump Station to stop the SSO rather than to recover the SSO. Nonetheless, even if the Discharger had attempted to immediately contain and recover the SSO, its efforts would likely have been greatly hampered as the SSO occurred at night. Access to the wetlands and Calera Creek is severely limited in the dark.

Additionally, it had been raining three days prior to the SSO, and Calera Creek was flowing high with storm water runoff. Therefore, even if the Discharger attempted to recapture the SSO, it may not have been able to contain and recover the majority of the SSO, because the increased creek flows would have quickly flushed the SSO to the Pacific Ocean (less than 100 yards away from the initial SSO location). Thus, the majority of the SSO was not subject to cleanup and abatement.

#### Degree of Toxicity of Discharge

The degree of toxicity for the SSO cannot be accurately quantified. However, raw sewage, as compared to properly treated 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 SSOs include:

- Adverse impact to fish and other aquatic biota caused by bio-solid deposition and oil and grease;
- 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.

At 253,000 gallons, the Discharger's December 3, 2005, SSO was large; though, because of rain that fell the previous three days before the SSO occurred, it was diluted with storm water and would not pose the same level of toxicity or impact as an equal volume of raw sewage during non-storm conditions. We estimate that the December 3<sup>rd</sup> SSO was about 1/3<sup>rd</sup> of the strength and toxicity as SSOs that occur during dry weather. This is based on the Discharger's estimation that 68% of the sewage flow was storm water. The Discharger's estimate is based upon the number of units that flow to this lift station, and visual estimation of the manhole overflow rates.

#### Ability to Pay and Ability to Continue Business

The Discharger's fiscal year 2006-2007 annual operating budget for collection, treatment and disposal of sanitary waste is approximately \$8.8 million. As the proposed ACL is a small fraction of the Discharger's planned expenses, Water Board staff considers that the recommended ACL amount will not seriously jeopardize the Discharger's ability to continue operations.

#### Voluntary Cleanup Efforts Undertaken

The Discharger cleaned up the street and spray washed the storm water wetland vegetation of sewage debris. The Discharger also raked up the sewage debris within the storm water wetland and recovered approximately 1,000 gallons of sewage while spray washing the wetland vegetation. The Discharger canvassed Rockaway Beach but did not observe any effects of the SSO and therefore did not perform any beach cleanup.

Although the spray washing of the wetland vegetation was responsible and appropriate, the use of fire hydrant water containing chloramines was not, as chloramines are toxic to fish. The Discharger should have removed the chloramines from the fire hydrant water prior to using it in the wetland. Despite this, the Discharger reported that it did not observe any fish kills as a result of the SSO or the use of the hydrant water.

#### Prior History of Violations

This section only summarizes past historical violations relating to SSOs larger than 10,000 gallons. On December 2 and 3, 2001, the Discharger discharged over one million gallons of untreated sanitary sewage from its Linda Mar Beach Pump Station to Linda Mar Beach at the Pacific Ocean. In addition, the Discharger's treatment plant's laboratory was not certified by the Environmental Laboratory Accreditation Program from September 10, 2000, to May 29, 2002. In February 2003, the Water Board assessed the Discharger an administrative civil liability of \$125,033 for the unauthorized discharge and the laboratory non-certification.

#### Degree of Culpability

The Discharger is responsible for the proper maintenance and operation of its sewage collection system, and a failure of that system caused the SSO. Thus, the Discharger is culpable for the December 3, 2005, SSO. In order to prevent this type of mechanical failure from occurring in the

future, the Discharger has made modifications to its pump system manifold and developed a new policy and procedure for the repair and removal of any pumps. The Discharger installed a new welded coupling a few weeks after the SSO occurred, which should prevent the coupling from slipping or falling off of the manifold during a pump removal or repair. In addition, the Discharger's new pump repair policy requires its pump station personnel, at the end of each shift, to inspect and secure any safeguards or riggings that have been constructed to secure pumps and valve assemblies.

#### Economic Savings

Water Board staff estimates that the Discharger had minimal savings in not preventing this SSO and in the ensuing response and cleanup. These savings include the cost of staff time to ensure that any rigging of pump repairs were secure and the cost of removing chloramines from the fire hydrant water prior to its use in the wetland.

The Discharger had planned to replace the pump prior to the Pump Station failure at a cost of \$27,000. The rigging failure only raised the cost of the pump replacement by \$75 (for the installation of the new welded coupling). However, the Discharger spent \$14,000 in hiring private electrical contractors to help with the cleanup and repair of the Pump Station, in addition to \$8,000 in its own labor.

#### Other Matters as Justice May Require

The Discharger has been cooperative and responsive to concerns raised by Water Board staff about the SSO and the investigation.

The Discharger's SSO response time was very good. If the Discharger had arrived an hour after the SSO started instead of 15 minutes, it is possible that the volume of the SSO would have doubled.

Rockaway Beach is a popular surfing, fishing and sunbathing locale, and as such, the SSO affected many people. However, the number of people affected would have been greater had the SSO occurred during the dry weather.

The Water Board's Resolution No. R2-2005-0059 declares support of local programs that inspect and rehabilitate private sewer laterals. The Resolution also states that the Water Board would consider the existence of such programs, especially those experiencing significant infiltration and inflow from private sewer laterals, as an important factor when considering enforcement actions for sanitary sewer overflows. Since 1997, the Discharger has had a program that inspects and rehabilitates private sewer laterals. Currently, the Discharger requires a property owner to inspect the integrity of the private sewer lateral upon any major remodeling and replace the sewer lateral, if necessary.

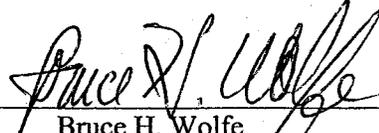
Staff time to prepare the Complaint and supporting evidence is estimated to be 100 hours. Based on an average cost to the State of \$100 per hour, the total staff cost is \$10,000.

10. Based on the above factors, the Executive Officer proposes civil liability be imposed on the Discharger in the amount indicated in Finding 1 for the violations cited above, which includes staff costs.
11. This action is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.

12. 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 \$170,000 and paying the remainder of the civil liability, all in accordance with the procedures and limitations set forth in the attached waiver.

MAY 30 2007

Date

  
Bruce H. Wolfe  
Executive Officer

Attachment: Waiver of Hearing Form

### WAIVER

If you waive your right to a hearing, the matter will be included on the agenda of a Water Board meeting but there will be no hearing on the matter, unless a) the Water Board staff receives significant public comment during the comment period, or b) the 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 6, 2007, 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 Water Board with regard to the violations alleged in this Complaint 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 Water Board meeting for which this matter is placed on the agenda. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the 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 Water Board with regard to the violations alleged in this Complaint, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to the amount identified in Finding 12 of this Complaint and paying the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the Water Board meeting for which this matter is placed on the agenda. The SEP proposal shall be submitted no later than the due date for this waiver, above. 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 19, 2002, and be subject to approval by the Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Executive Officer, I agree to pay the suspended penalty amount within 30 days of the date of the letter from the 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 Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Executive Officer. I understand failure to adequately complete the approved SEP will require immediate payment of the suspended liability to the CAA.

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title/Organization

Subject: SUPPLEMENTAL ENVIRONMENTAL PROJECTS AS COMPONENTS OF ADMINISTRATIVE CIVIL LIABILITIES

The San Francisco Bay Regional Water Quality Control Board (Regional Water Board) accepts and encourages Supplemental Environmental Projects (SEP's) in lieu of a portion of any Administrative Civil Liability (ACL) or Mandatory Minimum Penalty (MMP) imposed on dischargers in the Bay Area. This letter is to inform you of the types of projects the Regional Water Board will accept and the procedures for proposing and implementing a project.

The overall goals of the Regional Water Board's program for SEP's are: 1) monetary penalties should be directed to projects within the Region, especially in the watershed where the discharge occurred; 2) projects should benefit the environment; 3) projects should focus on education, outreach and/or restoration. The Regional Water Board identifies four categories of SEP's that may receive funding: pollution prevention, pollution reduction, environmental restoration, and environmental education. The project should not be used to mitigate the damage caused directly by the original violation or to implement measures required to comply with permits or regulations, since this is the responsibility of the discharger regardless of any penalties involved.

The Regional Water Board does not select projects for SEP's; rather, it is the discharger's responsibility to propose the project (or projects) they would like to fund and then obtain approval from the Regional Water Board. However, the Regional Water Board can facilitate this process by maintaining a list of possible projects, which is made available to dischargers interested in pursuing the SEP option. Dischargers are not required to select a project from this list, however, and may contact local governments or public interest groups for potential projects in their area, or develop projects of their own.

In cases where an SEP is approved by the Regional Water Board, payment of a portion of the ACL or MMP will be suspended if the project is satisfactorily completed on schedule. The SEP can only be used to offset a portion of a proposed penalty; therefore the final ACL package will consist of a monetary penalty, reimbursement of staff costs, and a project. Note that the total penalty is not reduced by implementing a project; rather the method of payment is being modified in order to achieve a greater environmental benefit.

The State Water Resources Control Board's Enforcement Policy requires third party oversight of SEPs. The Regional Water Board has contracted with the San Francisco Estuary Project (SFEP) to provide this oversight. SFEP serves as liaison between the discharger, the Regional Water Board and the fund recipient and will monitor project implementation and expenses. SFEP staff will also maintain a current list of potential projects and can assist in the selection process. This coordination work is funded by allocation of 6% of any SEP over \$20,000 to SFEP.

Questions regarding the Regional Water Board's SEP program may be directed to Carol Thornton at the San Francisco Estuary Project at (510) 622-2419.



# California Regional Water Quality Control Board

## San Francisco Bay Region



Linda S. Adams  
Secretary for  
Environmental Protection

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(510) 622-2300 • Fax (510) 622-2460  
<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger  
Governor

### NOTICE OF PUBLIC HEARING TO CONSIDER ADMINISTRATIVE CIVIL LIABILITY FOR CITY OF PACIFICA SAN MATEO COUNTY

The San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Executive Officer has issued an administrative civil liability complaint (Complaint) proposing a civil liability of \$190,000 against City of Pacifica (Discharger) for discharging 253,000 gallons of raw sewage into Calera Creek and adjacent wetlands on December 3, 2005. The Regional Water Board will hold a hearing on the Complaint as follows:

Date and Time: August 8, 2007, 9:00 a.m.

Place: Auditorium, 1515 Clay St., Oakland

No hearing will be held if the Discharger waives its right to a hearing and agrees to pay the proposed civil liability as set forth in the Complaint, provided no significant public comments are received during the public comment period. At the hearing, the Regional Water Board may affirm, reject, or modify the proposed civil liability, or refer the matter to the Attorney General for judicial enforcement.

#### Hearing Procedures

A copy of the procedures governing an adjudicatory hearing before the Regional Water Board may be found at Title 23 of the California Code of Regulations, § 648 *et seq.* Except as provided in these regulations, Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the Regional Water Board.

Any persons objecting to the hearing procedures set forth herein must do so in writing by June 15, 2007, to the contact listed below.

#### Hearing Participation

Other than prosecutorial staff, participants at the hearing are either designated as "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses. Designated parties are subject to cross-examination. Interested persons may present

non-evidentiary policy statements, and are not subject to cross-examination. Interested persons may not cross-examine parties, but may be asked to respond to clarifying questions.

The following participants are hereby designated as parties at the hearing:

City of Pacifica

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: prosecutorial staff and Discharger shall each have **20 minutes** to testify, present evidence, and cross-examine witnesses, and each interested person shall have **3 minutes** to present a non-evidentiary policy statement.

Dorothy Dickey, staff counsel with the State Water Resources Control Board, Office of Chief Counsel, regularly advises the Regional Water Board. With regard to this matter, however, Ms. Dickey has been assisting Regional Water Board staff in the prosecution. Ms. Dickey has not provided and will not provide advice to the Regional Water Board in connection with this matter before the Regional Water Board's final action in the matter.

**Written Comment and Evidence Deadline**

The deadline to submit any and all written comments and evidence to be offered at the hearing is **5 p.m. on July 6, 2007**. Persons shall submit **fourteen (14) copies** to Mr. Mike Chee at 1515 Clay Street, Suite 1400, Oakland, CA 94612.

**Questions**

Questions concerning this matter may be addressed to prosecutorial staff Mr. Mike Chee at 510-622-2333 or [mchee@waterboards.ca.gov](mailto:mchee@waterboards.ca.gov).

**Evidentiary Documents and File**

The Complaint and related documents are on file, and may be inspected or copied at the Regional Water Board's offices during weekdays between 8:00 a.m. and 5:00 p.m. The Complaint is also available on the Regional Water Board's website at [www.waterboards.ca.gov/sanfranciscobay](http://www.waterboards.ca.gov/sanfranciscobay).

5/30/07

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DATED

*Lila Tang*

\_\_\_\_\_  
Lila Tang, NPDES Division Chief

