

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2007-0001

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
COMBINED SEWER SYSTEM SPILL
CITY AND COUNTY OF SAN FRANCISCO
SAN FRANCISCO 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 and County of San Francisco (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), Section 13385(a)(4) and Section 13323.
2. On August 20, 2003, the Water Board adopted Order No. R2-2003-0073 (NPDES Permit No. CA0037681) for the Discharger, to regulate discharges of waste from the Discharger's Oceanside Water Pollution Control Plant (WPCP) and Westside Wet Weather Combined Sewer System. The Discharger is predominantly served by a combined sewer system. During rain events, the Discharger's combined sewer system collects storm water flows along with sanitary and industrial wastes from the west side of San Francisco and a small portion from the adjacent North San Mateo County Sanitation District. All of these flows drain towards the Discharger's three transport/storage boxes surrounding the perimeter of the western part of the City. During dry weather, the transport/storage boxes convey flows to the treatment plant. During wet weather, the boxes continue to transport flows, and the substantial capacity of the boxes provides storage for large volumes of storm water flows. This capacity allows solids to settle providing primary treatment to all flows. The Discharger's permit allows for collection, temporary storage, and discharge of treated effluents to the Pacific Ocean and to the shoreline at seven wet weather combined sewer overflow (CSO) structures.
3. As permitted by Order No. R2-2003-0073, the Westside Wet Weather Facilities include three large transport/storage boxes: the Richmond Transport located to the north, the Westside Transport located along Ocean Beach beneath the Great Highway, and Lake Merced Transport located to the south. The Richmond Transport connects to the Westside Transport through a 42-inch sewer line with the wastewater flowing from north to south. During larger storms, when the Oceanside WPCP reaches maximum capacity (65 million gallons per day [MGD]), storm flows that cannot be stored in the Westside storage/transport system (> 73.5 million gallons) will pass over a weir and under a baffle into a second (west) box, called the decant structure; settleable solids and floatable materials remain in the first (east) box, and are flushed to the treatment plant after the storm subsides. The excess effluent is "decanted" from the east box to the west box and then pumped via the Westside Pump Station to the Southwest Ocean Outfall (SWOO). If flows exceed the discharge capacity of the SWOO (175 MGD), the permit allows discharge of excess flows via CSO structures located at the shoreline. This decanted effluent has received flow-through treatment equivalent to primary which includes screening (at pump stations) and removal of settleable solids and floatable pollutants.

4. Order No. R2-2003-0073 includes the following requirements:

a. *Discharge Prohibition A.7*

“The Discharge of waste shall not create a condition of pollution or nuisance as defined in the California Water Code.”

b. *Wet Weather Performance Requirements C.1*

“The Discharger shall capture for treatment, or storage and subsequent treatment, 100% of the Westside combined sewage volume collected in the combined sewage system during precipitation events under design conditions. Captured combined sewage shall be directed either to the Oceanside WPCP or to the storage/transport. All combined sewage captured shall receive a minimum of the following treatment:

- i. Flow-through treatment (storage/transport)*
- ii. Primary treatment (Oceanside WPCP)*
- iii. Secondary Treatment (Oceanside WPCP)”*

c. *Provision F.8.a, Wastewater Facilities*

“The Discharger shall operate and maintain its wastewater collection, treatment and disposal facilities in a manner to ensure that all facilities are adequately staffed, supervised, financed, operated, maintained, repaired, and upgraded as necessary, in order to provide adequate and reliable transportation, treatment, and disposal of all wastewater from both existing and planned future wastewater sources under the Discharger’s service responsibilities.”

d. *Attachment K, Self-Monitoring Program (SMP) Part A and Part B*

i. SMP Part B, Section VI.C, Reporting Requirements

*“Any overflow, bypass or other significant non-compliance incident that may endanger health or the environment shall be reported according to sections G.1 and G.2 of Part A of the Self Monitoring Program.”**

* The referenced Sections (G.1 and G.2) in this requirement are a typographical error as Sections G.1 and G.2 are definitions for a “grab sample” and a “composite sample,” respectively. The correct referenced sections are Sections F.1 and F.2 which detail reporting requirements.

ii. SMP Part A, Section F.1, Spill Reports, Reports to be Filed with the Regional Board

“A report shall be made of any spill of oil or other hazardous material. Spills shall be reported to this Regional Board, at (510) 286-1255 on weekdays during office hours from 8 AM to 5 PM, and to the Office of Emergency Services at (800) 852-7550 during non office hours, and the U.S. Coast Guard at (415) 437-3091 (if the spill is into navigable waters) by telephone immediately after occurrence. A written reporting shall be filed with the Regional Board...”

5. The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) is the Water Board’s master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes programs of implementation to achieve water quality objectives. Specifically, Discharge Prohibition

15 in Table 4-1 of the 2005 Basin Plan states that “it shall be prohibited to discharge raw sewage or any waste failing to meet waste discharge requirements to any waters of the Basin.” The Basin Plan was duly adopted by the Water Board and approved by the State Water Resources Control Board, U.S. EPA, and the Office of Administrative Law where required. The 2004 version of the Basin Plan was in effect at the time of the discharge cited in this Complaint; the applicable prohibition remains unchanged in the current Basin Plan that was effective as of December 22, 2006.

6. CWC Section 13271, Notification requirement, states the following:

“(a)(1) Except as provided by subdivision (b), any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (1) that person has knowledge of the discharge, (2) notification is possible, and (3) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the Office of Emergency Services of the discharge in accordance with the spill reporting provision of the state toxic disaster contingency plan adopted pursuant to Article 3.7 (commencing with Section 8574.16) of Chapter 7 of Division 1 of Title 2 of the Government Code...

(b) The notification required by this section shall not apply to a discharge in compliance with waste discharge requirements or other provisions of this division.”

The State Water Board has adopted Title 23 California Code of Regulations Section 2250 that provides in relevant part that intentional or unintentional diversion of treated, partially treated or untreated wastewater from a collection system is subject to the requirements in CWC Section 13271.

7. On November 13, 2006, rusted hold-down bolts of a manhole cover failed, resulting in the discharge of approximately 475,000 gallons of raw sewage from the Discharger’s collection system to Ocean Beach and subsequently to the Pacific Ocean, which is a water of the San Francisco Bay region. The discharge caused the Discharger to violate Order No. R2-2003-0073 in the following ways: a) Discharge Prohibition A.7 by creating a condition of nuisance on Ocean Beach, b) Wet Weather Performance Requirements C.1 by not properly treating 100% of the wastewater collected in the combined sewer system, and c) Provision F.8.a by failure to maintain the hold-down bolts.
8. The Discharger violated Discharge Prohibition 15 of the Basin Plan by discharging raw sewage.
9. The Discharger did not notify the Office of Emergency Services of the CSO discharge, thereby violating Order No. R2-2003-0073 SMP Part B Section VI.C and SMP Part A Section F.1, and CWC Section 13271(a)(1).
10. Unless waived, a hearing on this Complaint will be held before the Water Board on June 13, 2007, 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 April 30, 2007, 5 p.m. Any written comments and evidence not so submitted will not be considered by the Water Board.
11. 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

12. This Complaint is based on the following facts:

- a. On Monday, November 13, 2006, the San Francisco Bay Area experienced a significant rain event. Rainfall at the Discharger's Oceanside WPCP measured 0.88 inches that day. As a result, the large volume of storm water collected in the Discharger's combined sewer system pressurized the sewer line and provided enough force to dislodge a manhole cover because the hold-down bolts were rusted and therefore failed. The manhole cover provides access to the connector sewer pipe located between the Richmond Transport and the Westside Transport. A discharge of combined sanitary and storm water overflowed from this manhole located near the Great Highway south of the Cliff House Restaurant and north of the intersection of Balboa Street and the Great Highway. The spill traveled over the Great Highway and onto Ocean Beach. The Discharger stated that the overflow lasted for approximately 90 minutes; it started at approximately 9:30 p.m. and ceased around 11:00 p.m. as a result of diminishing rainfall and reduced flows to the combined sewer system. The Discharger estimated the spill volume at approximately 500,000 gallons based on the pressure needed to lift the manhole cover, observations of the overflow water height above the manhole, and duration of the discharge. Based on the Discharger's calculations, 475,000 gallons flowed onto Ocean Beach and 25,000 gallons flowed along the Great Highway into catch basins, which are part of the Discharger's combined sewer system and the Westside Transport.
- b. The Oceanside WPCP operated in wet weather mode from approximately 2:00 p.m. on Monday, November 13, 2006, until 1:00 p.m. on Tuesday, November 14, 2006. Treatment plant wet weather operations occur when the instantaneous flow to the Oceanside facility exceeds 43 MGD as defined in the Discharger's NPDES permit. During that period, the treatment plant influent flow exceeded the 43 MGD and at 10:00 p.m. on Monday, it peaked at 63.2 MGD; the wet weather flow treated at the Oceanside facility is maximized at 60 to 65 MGD. Flow from the west box of the Westside Transport was measured at 107 MGD at 9:30 p.m. These combined flows (63.2 MGD plus 107 MGD) to the SWOO are close to, but did not trigger, the flow threshold of 175 MGD where CSOs through the designated CSO outfalls would be allowed.
- c. At 9:30 p.m., on November 13, 2006, based on a 911 phone call, the San Francisco Fire Department responded first to the scene of the dislodged manhole cover, closed down that part of the Great Highway, and proceeded to notify the Discharger of flooding from a broken sewer line. (The Discharger's response agencies for combined sewer system spills include the San Francisco Department of Public Works [SFDPW] and San Francisco Public Utilities Commission [SFPUC]. The SFDPW maintains the city streets and sewers while the SFPUC manages wastewater collection, treatment and disposal.) At approximately 10:45 p.m., when the Discharger arrived at the scene, flow from the manhole had significantly subsided. The Discharger assessed the situation and noted the displaced manhole cover. At approximately 11:00 p.m., flow from the manhole subsided completely. Since the overflow had ceased, the Discharger was able to replace the dislodged manhole cover.
- d. Shortly after the discharge ceased on the night of November 13, 2006, the Discharger made an initial assessment of the spill event. The Discharger walked onto Ocean Beach just past the end of the stairs and noted the ruts made in the sand from the flow to the beach and sewage debris, but did not note any water left standing on the beach. Also, heavy erosion of sediment occurred between the promenade and parking area. The Discharger determined at the time that any residual water from the spill had percolated into the sand and none of the spill could be recovered.

The Discharger dispatched a vactor truck to the scene, but the vactor truck was not used. The Discharger decided to reconvene the following morning to assess the spill situation in daylight.

- e. In the meantime, between 12:30 a.m. and 3:00 a.m. on November 14, 2006, the Discharger cleaned up the Great Highway by flushing down the road surface. All wash down water flowed into the catch basins along the Great Highway, which connect to the combined sewer system.
- f. Prior to the Discharger posting any warning signs and during the early morning hours of Tuesday, November 14, 2006, several people gained access to Ocean Beach and jogged on and through the affected area of the beach. In addition, also during the early morning hours of Tuesday before sunrise, a bicyclist rode on the Great Highway and Ocean Beach promenade through the muddied area almost falling over according to a televised report.
- g. Just after sunrise on Tuesday, November 14, 2006, at approximately 7:00 a.m., the Discharger returned to the incident location and began posting seven "No Swimming" signs along the Ocean Beach promenade from Balboa Avenue to Lincoln Way and completed the posting by 7:30 a.m. Shortly after 8:00 a.m., the Discharger notified Water Board staff of the discharge. By 9:00 a.m., the Discharger updated its recreational hotline and website with information regarding the discharge and noting the beach "no swimming" posting. By 9:30 a.m., the Discharger cordoned off all the stairwells in the affected beach area with caution tape and deployed approximately 45 barricades, each with a "polluted water" warning sign, at stairwells and positioned in a line south of the affected area of the beach from the promenade to the surf zone to block access to the contaminated beach area. However, the Discharger never notified the Office of Emergency Services (OES) of the sewage spill.
- h. Upon daylight on the morning of November 14, 2006, the Discharger could more easily see the path the spill had taken the night before. Scour marks on the sand indicated that the majority of the spill flowed onto the beach through the northern-most stairwell, with lesser volumes entering through each of the next two stairwells to the south. The spill then traveled seaward down the beach, arriving at a pre-existing longitudinal depression. The depression, running the length of a berm which forms with natural tidal activity, parallels the shore about midway between the surf line and promenade, and extends from the Cliff House to the north to Lincoln Way to the south. Based on these morning observations of pooled water and sewage scum, the Discharger surmised that the spill made its way into the northern quarter of the longitudinal depression.
- i. By the morning of November 14, 2006, the pools of sewage in the depression area extended roughly 300-yards long by 10- to 15-yards wide. Given the rain that had fallen the night of the spill, it is reasonable to assume that the pools consisted of a mixture of sewage, rainfall and seawater. A photograph of the area taken approximately 90 minutes before the spill, showing already existing pools of water, supports this assumption. The photograph was taken by a United States Geological Survey camera mounted on the roof of the Cliff House Restaurant.
- j. The Discharger did not note any evidence of sewage seaward of the depression; it only noted scour marks and sewage debris landward of the depression indicating that the flow did not breach the berm and did not reach the surf zone or Pacific Ocean. Morning high tide on November 14, 2006, occurred around 7:30 a.m. and it did not reach as high as the sand berm and depression.
- k. Based on the trail of sewage scum, the Discharger concluded that the discharge of combined storm water and wastewater filtered into the sand as it flowed over the beach until it reached the depression area and commingled with the existing standing pools of water. As the spill percolated through the sand at the high part of the beach, it reached the groundwater. Ocean

Beach overlies the northwest portion of the Westside Groundwater Basin. A 1999 SFDPW study on flow patterns of this groundwater basin indicate the groundwater table is above sea level in the area of the spill site and groundwater movement is westward toward the ocean. Under wet weather conditions, movement westward is more pronounced than under dry conditions. Therefore, the spill soaked into the sand and commingled with groundwater, before flowing into the Pacific Ocean.

- l. Between 7 a.m. and 9 a.m. on November 14, 2006, the Discharger collected water samples for bacterial analysis from the pooled water in the beach depression area and from the surf zone along Ocean Beach from Balboa Street to Fort Funston. The Discharger collected additional shoreline samples the following day on November 15, 2006.
- m. Between 11 a.m. and 8 p.m. on November 14, 2006, the Discharger cleaned the affected beach area. The Discharger removed sewage scum and the 6-inch layer of sand immediately below, and transported the 600,000 pounds of sewage scum/sand to a landfill using heavy construction equipment. The Discharger did not recover the standing sewage water; instead, the Discharger covered up the remaining pools of sewage water with sand. After the Discharger buried the pooled water, and graded and leveled the beach sand, there were no longer standing pools of sewage on the beach.
- n. On the morning of November 15, 2006, the Discharger obtained the surf zone bacteria sample results taken on November 14, 2006. The sample results were below applicable single sample bacteria standards for water contact recreation. Therefore, by 12:30 p.m. on November 15, 2006, the Discharger removed the "No Swimming" warning signs, caution tape, and barricades cordoning off the spill affected area of the beach.
- o. The results of the shoreline samples obtained on November 15, 2006, were also below applicable single sample bacteria standards for water contact recreation.
- p. Discharge Prohibition A.7 of Order No. R2-2003-0073 prohibits the discharge of waste that creates a nuisance.
- q. 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."
- r. The November 13, 2006, spill resulted in the closure of a large area of Ocean Beach for two days and Ocean Beach is regularly used by residents in the community. Also, the spill occurred while conveying the waste for treatment at the Oceanside WPCP. Therefore, the Discharger created a nuisance which violated Discharge Prohibition A.7 of Order No. R2-2003-0073.

- s. Wet Weather Performance Requirements C.1 of Order No. R2-2003-0073 requires the Discharger to capture for treatment, or storage and subsequent treatment, 100% of the Westside combined sewage volume collected in the combined sewage system during precipitation events under design conditions. Captured combined sewage shall be directed either to the Oceanside WPCP or to the storage/transports.
- t. The November 13, 2006, spill caused approximately 475,000 gallons of wastewater collected in the Discharger's combined sewage system to not receive treatment from the Oceanside WPCP and/or the storage/transports. Therefore, the Discharger violated Wet Weather Performance Requirement C.1 of Order No. R2-2003-0073.
- u. Provision F.8.a of Order No. R2-2003-0073 requires the Discharger to operate and maintain its wastewater collection, treatment and disposal facilities in a manner to ensure that all facilities are adequately staffed, supervised, financed, operated, maintained, repaired, and upgraded as necessary, in order to provide adequate and reliable transportation, treatment, and disposal of all wastewater from both existing and planned future wastewater sources under the Discharger's service responsibilities.
- v. The Discharger failed to properly maintain its combined sewer system by failing to replace rusty hold down bolts for the manhole cover. This failure is a violation of Provision F.8.a of Order No. R2-2003-0073.
- w. Discharge Prohibition 15 of the Basin Plan states that it shall be prohibited to discharge raw sewage or waste failing to meet waste discharge requirements to any waters of the region.
- x. On November 13, 2006, the Discharger discharged approximately 475,000 gallons of diluted raw sewage to Ocean Beach which percolated through the sand and into the ground water and ultimately made its way into the Pacific Ocean, both waters of the region, in violation of Basin Plan Discharge Prohibition 15.
- y. Section VI.C of SMP Part B of Order No. R2-2003-0073 requires the Discharger to report any significant non-compliance incident that may endanger health or the environment according to Sections G.1 and G.2 of SMP Part A of Order No. R2-2003-0073. *(The reference to Sections G.1 and G.2 of SMP Part A of Order No. R2-2003-0073 is a typographical error and should instead be Sections F.1 and F.2 of SMP Part A of Order No. R2-2003-0073. Sections G.1 and G.2 of SMP Part A of Order No. R2-2003-0073 provide definitions for a "grab sample" and a "composite sample.")* Sections F.1 and F.2 of SMP Part A of Order No. R2-2003-0073 require the Discharger to report the spill to the Office of Emergency Services during non office hours in the same procedure as if it were a spill of oil or hazardous waste.
- z. Further, CWC Section 13271(a)(1) requires that any person who, without regard to intent or negligence, causes or permits sewage to be discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (1) that person has knowledge of the discharge, (2) notification is possible, and (3) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the Office of Emergency Services (OES) of the discharge.
- aa. The Discharger did not notify OES, which violated Section VI.C of SMP Part B of Order No. R2-2003-0073 and CWC Section 13271(a)(1).

PROPOSED CIVIL LIABILITY

12. 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 1 day plus \$10 times 474,000 gallons or \$4.75 million.

13. 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 spill occurred due to the failure of rusted bolts that held down a manhole cover to the combined sewer system. The high volume of storm water in the system, from the rain storm, pressurized the sewer line. The rust on the bolts compromised the structural integrity of the bolts so that they could not hold down the manhole cover.

The beneficial use of Ocean Beach for noncontact water recreation, such as hiking, beachcombing, sightseeing and aesthetic enjoyment, was adversely affected by the spill for two days. Additionally, the groundwater and Pacific Ocean were likely affected by the discharge; however, the extent is unknown since the Discharger did not obtain any groundwater samples and the surf zone samples were not taken at the appropriate time. The discharge pooled in a depression area of the beach approximately 300-yards long by 10- to 15-yards wide which affected the public's use of the beach for at least 2 days.

Sampling confirmed that the spill reached the pooled water on the beach. On Tuesday, November 14, 2006, the Discharger collected water samples for bacterial analysis from pooled water in the depression area on the beach and the surf zone along Ocean Beach from Balboa Street to Fort Funston (approximately four miles of shoreline). The samples collected from the pooled water in the

depression area indicated extremely elevated bacteria levels above applicable single sample bacteria standards for water contact recreation.

The Discharger did not sample at the right time in order to assess the impact of the spill in the surf zone. Results from the bacteria samples collected in the surf zone on November 14, 2006, were available the next day. The Discharger took additional bacteria samples along the surf from Balboa Street to Sloat Boulevard on Wednesday, November 15th. Though the bacteria levels were elevated for both days sampled, they were below applicable single sample bacteria standards for water contact recreation. As the spill percolated through the sand at the high part of the beach, it reached the groundwater. Ocean Beach overlies the northwest portion of the Westside Groundwater Basin. Studies conducted on flow patterns of this groundwater basin indicate it is above sea level in the area of the spill site and movement is westward toward the ocean. Under wet weather conditions, movement westward is more pronounced than under dry conditions. Therefore, the spill likely dissipated through the sand moving with groundwater into the Pacific Ocean. Based on a 1999 SFDPW study of groundwater movement in the area, the Discharger estimates the spill would have migrated to the ocean within 4.3 days. Therefore, the surf zone sample results obtained by the Discharger (having been sampled one and two days following the discharge) did not demonstrate the impacts on the ocean as the samples were obtained prior to the spill's migration to the ocean.

Though it is likely the beneficial uses of the groundwater were not affected, the quality of the groundwater was likely affected by the spill, but the extent is unknown since the Discharger did not obtain any groundwater samples. Due to the oceanward groundwater gradient, the Discharger states that the discharge did not have any impacts to beneficial uses of the groundwater in the Westside Basin as no irrigation and potable wells exist close enough to be affected. The closest existing production well is the North Lake irrigation well at Golden Gate Park located 1000-feet south and 2000-feet inland from the spill. There are no current potable groundwater users in the San Francisco portion of the Westside Basin. The closest potable well is over 4000-feet southeast of the spill site on the south side of Golden Gate Park along Lincoln Way.

The gravity of the violation associated with the spill is significant due to its large volume of 475,000 gallons. The discharge did not receive primary and secondary treatment from the Oceanside WPCP to protect the beneficial uses of the Ocean Beach and the Pacific Ocean. A permitted CSO would have received additional primary treatment from the Westside Transport. However, the extent to which the ocean was affected is unknown as the Discharger did not obtain any samples near the surf zone when the spill finally made its way to the ocean in the four- to five-day period in which the Discharger calculated it would reach the ocean.

Susceptibility of the Discharge to Cleanup or Abatement

Although the majority of the spill ended up flowing onto Ocean Beach, with a portion of the flow percolating into the sand, the Discharger had opportunities to recover some of the spilled sewage. An unknown volume pooled in the 300-yard long by 10- to 15-yard wide depression area of the beach. The Discharger could have recovered a portion of the spill right after the discharge ceased, but did not.

Additionally, the owner of the beach, the National Park Service (NPS), may have been able to discover the pooled spill and initiate recovery operations had the Discharger contacted the NPS the night of the spill. However, the Discharger did not contact the NPS until the next morning on November 14th, nine hours after the spill occurred. Nonetheless, even if the NPS had discovered the spill reached and was accumulated in a bermed depression area, how much of the spill the NPS could

have recovered is unknown. Additionally, since the spill occurred at night, it was more difficult for the Discharger to see that the spill had pooled in the bermed area.

By sunrise of the morning after the spill, the Discharger discovered that the spill had originally pooled in the bermed depression area on the beach and that an unknown volume of the sewage remained pooled in the 300-yard long by 10- to 15-yard wide depression area. The Discharger could have pumped and recovered this remaining pooled sewage water but did not. Instead, the Discharger covered up the remaining pools of sewage water with sand, with the intention of protecting the public from exposure. However, covering up the pooled sewage was not the best nor the only way to protect public health; the Discharger should have cordoned off the affected area, recovered the pooled sewage, and then backfilled the area with clean sand.

Degree of Toxicity of Discharge

It is difficult for Water Board staff to accurately assess the direct impacts of the discharge. 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 bacteria (which is measured in terms of total and fecal coliform) and viruses. These pollutants exert varying levels of impact on water quality, and, as such, may adversely affect beneficial uses of receiving waters to different extents. Some possible adverse effects on water quality and beneficial uses as a result of sewage spills 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 at low concentrations; 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 475,000 gallons, the Discharger's November 13, 2006, spill was large. However, because of storm conditions, it was highly 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 November 13th spill was about 1/16th of the strength and toxicity as non-storm related spills. This is based on the Discharger's estimation that 94% of the flow was storm water. The Discharger's estimate is based upon flow volumes when the wet weather facilities are operating at or near capacity.

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 and storm water runoff is approximately \$186.6 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 did not recover any of the spilled sewage but did take steps to clean the affected beach of scum and trash the morning after the spill. The discharge left a two- to four-inch layer of sewage scum along the depression area approximately 300-yards long by 10- to 15-yards wide. The Discharger deployed heavy equipment to remove the sewage scum, excavated an additional 6 inches

of sand, transported approximately 600,000 pounds of sand from Ocean Beach, and disposed of the scum/sand at a landfill.

The Discharger could have removed the remaining pooled water in the depression area prior to covering it up with two feet of beach sand but did not. Instead, the Discharger buried the sewage water and allowed the spilled sewage to dissipate into the sand.

The Discharger cleaned the road surface of the Great Highway during the early morning hours of November 14, 2006. The Discharger also cleaned and repaired the eroded sediment between the promenade and parking area the morning after the spill.

Prior History of Violations

In April 2003, due in large part to inadequate inspection and maintenance of a sewer manhole, the Discharger had an unauthorized discharge of 99,000 gallons of untreated sewage from its Sheriff's Department Jail sewer lateral in the City of San Bruno. This sewage spill flowed into a storm drain inlet, resulting in a discharge to Milagra Creek and the Pacific Ocean. The City of Pacifica had to close Pacific Manor Beach for eleven days due to high bacteria levels caused by the spill. In addition, during sewer line repairs, an adjacent drinking water transmission pipeline was punctured and the residents of the City of Pacifica had to boil or chlorinate their drinking water for several days. In September 2004, the Water Board imposed an administrative civil liability of \$118,000 for the unauthorized discharge.

The Discharger had ten unpermitted dry weather spills during the period between April 1995 and October 1996 from pump stations and combined sewer overflow structures for a total of 1.26 million gallons. The Discharger also experienced a major spill of combined sewage on December 11, 1995, from the collapse of a brick sewer line of approximately 94 million gallons. In March 1997, the Water Board imposed an administrative civil liability of \$300,000 for the eleven unpermitted spills.

Degree of Culpability

The Discharger is responsible for the proper maintenance and operation of its combined sewer system, and a failure of that system caused the spill. Thus, the Discharger is culpable for the November 13, 2006, spill. As part of ongoing improvements to the sewer maintenance program, the Discharger initiated a routine inspection program in 2006 to look at various conditions in the transport/storage boxes. In October 2006, the Discharger's staff entered the transport connector box through the manhole that is the subject of this enforcement action. After finishing the inspection and exiting the connector box, the Discharger's staff secured the manhole cover following normal bolt securing procedures. The Discharger's staff reported that the bolts on this manhole cover showed signs of rust; however, the bolts were not friable at the time and attached securely when tightened.

Nonetheless, the bolts did fail as a result of weakened strength due to rust and the normal force from the pressure in the collection system during wet weather. Following the November 13, 2006, spill, to decrease the likelihood that the manhole cover can be dislodged due to high pressure, the Discharger repaired the manhole by placing helicoils in the existing bolt holes to increase the holding ability. In addition, the Discharger welded two two-inch wide metal straps criss-cross across the manhole cover to the existing cover frame.

Economic Savings

Water Board staff estimates that the Discharger saved about \$3,500 by not properly responding to the spill at the time it occurred. This estimate consists of the avoided cost of overtime hours spent, because though the Discharger ultimately spent its staff time, had it done so in a timely fashion instead of waiting until the morning, it would have had to rely upon on-call personnel at overtime rates for much of it. First, the Discharger saved 2 overtime hours by not thoroughly investigating the extent of the spill on the night it occurred. Had the Discharger spent this time, it would have discovered that much of the spill had pooled in a depression area on the beach. Through this initial mistake, the Discharger incurred additional savings by avoiding 18 overtime hours of staff needed to cleanup the pooled spill before some of it seeped into the beach by the morning. Also, the Discharger incurred savings by avoiding 22 overtime hours needed to install barricades to prevent public contact with the spill on the night of the spill before morning joggers came in contact with the residue and scum.

Water Board staff considered other potential cost savings and determined them to be negligible. These include the savings from not preventing the spill and not notifying OES. The savings from not replacing the rusted bolts are negligible because the Discharger had inspected that manhole just one month prior and could have replaced the bolts at that time but didn't. So the savings would be the cost of the bolts which is minimal. Also, as mentioned earlier, the Discharger has already initiated a routine inspection program of its collection system. As part of this, it will assess other manholes that become pressurized and weld these manholes as necessary to prevent future similar spills. Finally, the staff time it takes to call OES is minimal so the cost savings for this is negligible.

Other Matters as Justice May Require

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

In several ways, the Discharger failed to respond adequately to the spill, and therefore increased the danger caused by the spill to the public who frequent Ocean Beach. The State of California has a system for disseminating emergency information to all appropriate agencies, through OES. The Discharger did not immediately notify OES, nor did it immediately contact the owner of Ocean Beach, the NPS. The Discharger did not take the steps necessary to protect the public from direct contact with the sewage scum and/or pooled sewage: neither the signs that were eventually placed along the beach nor the information that was eventually updated on the Discharger's recreational hotline and website were posted soon enough to warn early-morning beach users. A member of the public complained to Water Board staff that he had jogged through the sewage scum on the beach the morning after the spill, not seeing any signs warning him to avoid the area.

The November 13, 2006, spill is similar to a combined sewer discharge from a permitted discharge site with two significant differences. One is that the spill did not receive the primary treatment that a permitted combined sewer discharge receives prior to discharge. In general, primary treatment removes roughly 40% of the settleable and floatable solids. This equates to about 40% of the pollutants. The second difference is that the November spill overflowed the Great Highway onto landward areas of Ocean Beach thus providing greater opportunity for public contact. However, despite these differences during heavy storm events, combined sewer discharges occur periodically from the transport/storage boxes through permitted discharge sites onto Ocean Beach and other receiving water locations. There are two permitted discharge locations onto Ocean Beach, one at the foot of Sloat Boulevard (approximately three miles south of the spill site) and one at the foot of Lincoln Way (approximately ¾ mile south of the spill site). When a combined sewer discharge

occurs from either of these structures, flow discharges onto the sand shoreward of the Pacific Ocean. A portion of all flows discharged through permitted discharge sites percolates into the sand before reaching the ocean. The Discharger states that these percolated flows filter down through the sand and move toward the ocean with the groundwater table, just as described for the November 13th spill. At high tides, permitted discharge sites may be located within the surf zone. At extremely low tides, the distance between the discharge structure and the ocean could be such that all of the discharge percolates completely into the sand and there is no direct discharge to the ocean. Considering that the sewer system operated at or near full capacity at the time of the spill, the levels of bacteria present in the November 13th spill would be similar in nature to the levels of bacteria present from any discharge coming from the storage/transport boxes through a permitted discharge site.

Ocean Beach is a popular and well-used public area, and as such, the spill affected many people. However, the number of people affected would have been greater had the spill occurred during daylight hours or summer months.

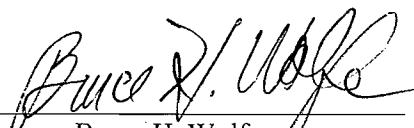
The Water Board adopted Resolution No. R2-2005-0059 that declares support of local programs that inspect and rehabilitate private sewer laterals. The Resolution also states that the Water Board would consider the existence of such programs, especially those experiencing significant infiltration and inflow from private sewer laterals, as an important factor when considering enforcement actions for sanitary sewer overflows. The Discharger does not currently have a program that inspects and rehabilitates private sewer laterals.

Staff time to prepare the Complaint and supporting evidence is estimated to be 220 hours. Based on an average cost to the State of \$100 per hour, the total cost is \$22,000.

14. Based on the above factors, the Executive Officer proposes civil liability be imposed on the Discharger in the amount of \$626,000 for the violations cited above, which includes \$22,000 in staff costs.
15. 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.
16. 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 \$582,000 and paying the remainder of the civil liability, all in accordance with the procedures and limitations set forth in the attached waiver.

MAR 26 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 April 30, 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 Complaint No. R2-2007-0001 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 Complaint No. R2-2007-0001, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$582,000 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 April 30, 2007, 5 p.m. 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.