

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN FRANCISCO BAY REGION

IN THE MATTER OF:)	
)	
SEWERAGE AGENCY OF)	COMPLAINT NO. R2-2008-0070
SOUTHERN MARIN)	FOR
WASTEWATER TREATMENT PLANT))	ADMINISTRATIVE CIVIL LIABILITY
450 Sycamore St.)	August 11, 2008
<u>Mill Valley, CA</u>)	

THE SEWERAGE AGENCY OF SOUTHERN MARIN IS GIVEN NOTICE THAT:

1. The Sewerage Agency of Southern Marin (SASM) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), may impose civil liability under 13385 of the California Water Code.
2. SASM operates the Wastewater Treatment Plant (WWTP) located at 450 Sycamore Street, Mill valley, CA. The WWTP and associated wastewater collection system operates under Order No. R2-2007-0056 (NPDES Permit No. CA00337711). The collection system is also subject to State Water Resources Control Board (State Water Board) Order No. 2006-0003. This Complaint is issued to address alleged violations of the Water Code during January 2008.
3. Unless waived, a hearing on this complaint will be held before the Water Board on October 8, 2008, at 1515 Clay Street in the Auditorium, Oakland, California. You or your representative will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of the civil liability. An agenda for the meeting will be provided to you not less than 10 days before the hearing date. The deadline to submit all evidence or comments concerning this complaint is September 10, 2008.

ALLEGATIONS

1. SASM is composed of six member agencies who operate under a "Restated Joint Exercise of Powers Agreement", last revised January 27, 2000. The WWTP treats domestic wastewater from the six member agencies: City of Mill Valley, Almonte Sanitary District, Alto Sanitary District, Homestead Valley Sanitary District, Richardson Bay Sanitary District, and the Kay Park Area of Tamalpais Community Services District. The present service area population is approximately 28,000. The member agencies finance the operation and

maintenance of the WWTP in proportion to the number of Equivalent Dwelling Units (EDUs) in the service area. An EDU is equal to 200 gallons per day. Each member agency's estimated share is listed in the Restated Joint Exercise of Powers Agreement. This agreement also stipulates that each agency is responsible for the operation and maintenance of its own collection system.

2. As more fully described below, during the month of January 2008, two discharge events occurred at the WWTP that constitute NPDES Permit and Water Code violations. First, on January 25, SASM bypassed 2.45 million gallons (MG) of screened untreated sewage influent to equalization ponds, which then discharged to Pickleweed Inlet, which is connected to Richardson Bay at the North end of San Francisco Bay. Second, on January 31, SASM bypassed 962,000 gallons of treated but undisinfected wastewater to Pickleweed Inlet. This discharge occurred as a result of understaffing and inadequate equipment maintenance.

3. The SASM WWTP is a secondary treatment facility designed for an Average Dry Weather Flow (ADWF) of 2.9 million gallons per day (MGD). This capacity was re-rated in 1988 to 3.6 MGD, which is the current permitted ADWF capacity. The design Peak Wet Weather Flow (PWWF) or maximum 24-hour average is listed in the Operation and Maintenance (O & M) Manual as 24.7 MGD. This is the maximum flow that the secondary treatment system can theoretically handle over a 24-hour period. The design peak hour flow is listed as 32.7 MGD.

4. The permitted effluent outfall is also rated at 32.7 MGD. The outfall terminates about 840 feet offshore in Raccoon Strait of Central San Francisco Bay at an outfall 84-foot in depth below mean sea level. However, SASM shares this outfall with another WWTP (operated by Marin County Sanitary District No. 5). According to a March 7, 1983, agreement between the two agencies, SASM's share of the outfall capacity is limited to a maximum flow of 24.7 MGD. This is also SASM's effluent pumping capacity when all six effluent pumps are in operation. The practical consequence of this arrangement is that sustained flows above 25 MGD are likely to result in overflow and flooding of the SASM WWTP. The actual volume of flow that SASM can transport through this outfall may also be affected by tides and the gravity effluent flow from Sanitary District No. 5.

5. The treatment process consists of screening facilities, grit removal, primary sedimentation clarifiers, biological treatment using trickling filters, secondary clarification, chlorination, and dechlorination. Chlorine contact time occurs in the six-mile effluent force main line, and dechlorination occurs prior to entrance into the outfall by Marin County Sanitary District No. 5. The final effluent is combined with treated, disinfected, and dechlorinated effluent from Marin County Sanitary District No. 5 and discharged through the same outfall.

6. The actual average dry weather flows between 2002 and 2005 were in the range of 2.2 – 2.6 MGD. The City of Mill Valley and Richardson Bay Sanitary District are the two largest member agencies contributing 51% and 32% of the total flow, respectively.

7. Wet weather conditions can cause the influent flow to exceed 24.7 MGD or the design capacity of the biological treatment processes. Influent flows exceeding 24.7 MGD are diverted after screening to two earthen unlined equalization ponds with a combined capacity of 1.74 MG.¹ Above 24.7 MGD, two dedicated influent pumps can pump the excess flow to the equalization ponds at a maximum combined flow rate of about 12 MGD. SASM's practice calls for the diverted flow to be returned back to the headworks for full treatment after the high influent flows subside. However, at the rate of 12 MGD, the two ponds would predictably exceed capacity at just under four hours time and begin to overflow.

8. Two equalization ponds are located on the WWTP premises and feature an overflow pipe which leads directly to Pickleweed Inlet. Any discharges from this pipe are not authorized by the NPDES permit. If it discharges, the pipe would convey raw sewage that has been screened and diluted into Pickleweed Inlet. This would be expected to occur when the flows exceed the plant's hydraulic capacity. The pipe is merely a physical remnant of the replaced treatment facility. The existing SASM WWTP was upgraded in 1986 and a new discharge outfall was authorized as noted in Allegation 4, above. Since discharges from the pipe are not authorized under the NPDES permit, any such discharges are a violation of the permit.

9. The WWTP is currently staffed by three operators and one Laboratory Director/Analyst. Stephen Danehy serves dual roles of General Manager and Chief Plant Operator. At one time, the WWTP had a General Manager separate from the Chief Plant Operator and it also had a Clerical Assistant. Mr. Danehy reports that he currently spends most of his time on managerial and clerical duties, leaving him little time to focus on operational needs of the WWTP. An organizational chart for SASM's Operations Department in 1996 shows that it had at least four more positions than it has now. The reduction in staff has occurred despite the fact that the WWTP's capacity needs have remained the same, but the need for maintenance and repairs has increased. Formerly, SASM had a separate Chief Plant Operator and a separate Lead Maintenance Mechanic. Both positions have been eliminated or combined with other positions. The maintenance department currently consists of a Maintenance Supervisor and two maintenance mechanics, a mechanic's aide and a painter. The Maintenance Supervisor, Mike Aries, reports that he had more staff in the past, and that the department is understaffed. As a result of understaffing, as of

¹ The NPDES Permit recites that the capacity of the ponds is 2.21 MG. However, SASM has recently reported that the capacity was recently measured by a consultant and that a more reliable capacity figure is 1.74 MG.

February 2008, a review of work orders showed that there were 50 open work orders, some dating back to 2005. While most dealt with non-operating repairs, such as rusting equipment, there were several open work orders dealing with critical pieces of equipment that involved plant operations, such as a work order for a defective microswitch associated with the wet well controller and a broken hypochlorite line that feeds the disinfectant to the final effluent.

10. JANUARY 25, 2008, DISCHARGE

a. On Friday, January 25, 2008, a winter storm struck Marin County. According to SASM's January 2008 Self-Monitoring Report, the peak influent flow for that day was about 44 MGD. This is 19.3 MGD in excess of the plant's influent flow capacity. SASM reported to the Regional Water Board that the average and peak daily flows on January 25 were 11.62 and 44 MGD, respectively.

b. Flow charts indicate that the influent flow peaked at about 44 MGD between 2 p.m. and 3 p.m. and remained at a sustained flow rate of about 30 MGD between 3 p.m. and midnight. As a result of this overwhelming volume of influent, SASM reported the equalization ponds started overflowing into the Pickleweed Inlet of Richardson Bay at about 6 p.m., which corresponds to the predictable overflow point based on maximum pumping capacity for a period of just under four hours as noted in Allegation 7, above.

c. From 6 p.m. to midnight on January 25, approximately 2.45 MGD of screened, but untreated sewage overflowed to Pickleweed Inlet. Flow charts indicate that, during that period of time, effluent pumps were discharging at a rate of about 23 MGD and continued to discharge at that rate until about 5 a.m. the following morning. Mr. Danehy's report dated February 14, 2008, states that five of the six effluent pumps were in service during that time. The sole operator on duty during the day shift was the General Manager. The next two shifts were staffed by operators John Ehni and Roger Paskett, respectively.

d. SASM asserts the bypass complied with "the approved Operation and Maintenance plan" for the facility.

e. After the emergency ponds started overflowing at about 6 p.m. the operator on duty (John Ehni) was apparently under the impression that a blend of primary and secondary effluent was discharged through the effluent outfall. He set up a composite sampler at about 7:30 p.m. and also collected grab samples. However, according to the laboratory director these samples were not collected at the appropriate location and most of them were not analyzed (although they were reportedly preserved and stored for a time). Subsequently, SASM determined that, based on its

review of recirculation wet well charts that blending did not occur because the water level in the wet well did not exceed 13 feet.

f. A total coliform test performed on one grab sample resulted in 130 Most Probable Number (MPN)/100 ml, which was within the permit limit. However, this sample was taken at the normal designated effluent sampling point, Air Relief Valve #1, at 9:40 p.m. For that reason, the sample failed to include any of the bypassed untreated sewage. As a consequence, the sampling does not comply with permit requirements.

g. In the event of a bypass event, the Laboratory Director had identified sampling stations in the marsh headlands, both up and downstream of the discharge. The Laboratory Director was not present during this event but had prepared sample bottles in anticipation of another non-permitted blending event, not an emergency storage pond bypass. The lack of specific guidance or Standard Operating Procedures (SOPs) (including the safety precautions) for sampling during emergency situations was certainly a major factor that resulted in the failure to sample in accordance with the permit requirements.

h. SASM failed to properly report the January 25, 2008, discharge to the California Office of Emergency Services (OES) and the Regional Water Board as required in its permit and by Water Code Section 13271.

11. JANUARY 31, 2008, DISCHARGE

a. According to the WWTP staff (Stephen Danehy and John Ehni) the weather forecast for Thursday, January 31, 2008, called for light showers and approximately a half an inch of rain. Mr. Ehni, a Grade III operator, completed his day shift and went home at about 2:30 p.m. The influent flow at that time was between 7 and 8 MGD. Prior to leaving the WWTP Mr. Ehni left **two** of the **six** effluent pumps in the automatic position. This would be adequate for a flow of 14 MGD.

b. According to Mr. Danehy, when he left the WWTP at approximately 3:40 p.m. the flow was about 9 MGD. By that time the rain was steady and heavier than was predicted earlier in the day.

c. According to WWTP records, the influent flow reached 18 MGD by 4:30 p.m. and an alarm signal was automatically sent out to the alarm company dispatcher. The dispatcher called the normally scheduled on-call operator (Roger Paskett) and left messages at his home and on his cell phone. According to SASM operators the alarm company dispatcher did not continue calling other WWTP operators on a list provided by SASM when the dispatcher failed to reach Mr. Paskett. Consequently, the alarm company failed to make contact with any plant operators.

d. Meanwhile, at about 5:30 p.m. partially treated wastewater was overflowing the secondary treatment structures because the WWTP influent volume exceeded the capacity of the two effluent pumps that were on-line. According to SASM, the wastewater flowed through the Corporation Yard parking lot, into the vehicle and equipment storage areas, into other out-buildings and eventually exited into Corte Madera Creek via a storm drain. Corte Madera Creek empties a short distance below into Pickleweed inlet of Richardson Bay.

e. After a few hours at home Mr. Ehni realized that the rain was still coming down strong. Just before 10 p.m. he decided to check the WWTP flows from his lap-top computer. When he noticed that the effluent pumps were discharging 14 MGD (their full capacity) he called Mr. Paskett. They both arrived at the WWTP and noticed that the wastewater was flowing over the clarifier walls. They turned on the remaining effluent pumps, which stopped the overflow.

f. On that particular day, the operator on "call duty" was supposed to be Mr. Roger Paskett; however, he had arranged with another operator, Mr. Dennis Parker, to cover for him that day. This change should not have affected the eventual outcome as long as the alarm company dispatcher followed existing notification procedures that according to SASM would have required that the dispatcher call the next person on the list until he/she reached a WWTP employee.

g. The overflow caused significant damage and disruption at the WWTP, which required several days to repair and clean up. The return sludge pumping facility located in the dry well near the secondary clarifiers was completely inundated. Both the Regional Water Board and OES were notified in a timely manner, however, no samples of the overflow were taken. Mr. Danehy stated that overflow and receiving water samples were not taken because of safety concerns.

PERMIT REQUIREMENTS APPLICABLE TO SASM

ORDER NO. R2-2007-0056 (NPDES PERMIT NO. CA0037711) contains the following provisions:

Section III – DISCHARGE PROHIBITIONS

A. The discharge of treated wastewater at a location or in a manner different from that described in this order is prohibited.

D. The bypass of untreated or partially treated wastewater to waters of the United States is prohibited, except as provided for in the conditions stated in 40 CFR 122.41(m)(4) and in A.12 of the Standard Provisions and Reporting Requirements for NPDES Surface Water Discharge permits, August 1993.

Section VI – PROVISIONS

C.6.c (1) The Discharger shall maintain a Contingency Plan as required by Regional Water Board Resolution 74-10 (Attachment G) and as prudent in accordance with current municipal facility emergency planning. The discharge of pollutants in violation of this Order where the Discharger has failed to develop and/or adequately implement a Contingency Plan will be the basis for considering such discharge a willful and negligent violation of this Order pursuant to Section 13387 of the California Water Code.

C.6.c (2) The Discharger shall regularly review and update, as necessary, the Contingency Plan so that the plan may remain useful and relevant to current equipment and operation practices. Reviews shall be conducted annually, and updates shall be completed as necessary.

C.6.c (3) The Discharger shall provide the Executive Officer, upon request, a report describing the current status of its Contingency Plan review and update. The Discharger shall also include, in each annual self-monitoring report, a description or summary or review and evaluation procedures and applicable changes to its Contingency.

Attachment D – FEDERAL STANDARD PROVISIONS

I. STANDARD PROVISIONS – PERMIT COMPLIANCE

D. Proper operation and maintenance

The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance....

G. Bypass

1. Definitions

a. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility [40CFR 122.41(m)(1)(i)(4)].

3. Prohibition of bypasses - Bypass is prohibited, and the Regional Water Board may take enforcement action against a Discharger for bypass unless

- a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- b. There were no feasible alternatives to the bypass.....; and
- c. The Discharger submitted notice to the Regional Water Board...

Attachment G - SELF-MONITORING PROGRAM, PART A, NPDES PERMITS (Included in the Order No. R2-2007-0056 at VI.B by reference)

Section C. SPECIFICATIONS FOR SAMPLING AND ANALYSES

2. Effluent

- h. When any type of bypass occurs, composite samples shall be collected on a daily basis for all constituents at all affected discharge point which have effluent limits for the duration of the bypass.

WATER CODE PROVISIONS RELEVANT TO THESE EVENTS

Section 13376 provides:

The discharge of pollutants or dredged or fill material or the operation of a publicly owned treatment works or other treatment works treating domestic sewage by any person except as authorized by waste discharge requirements or dredged or fill material permits is prohibited, except that no waste discharge requirements or permit is required under this chapter if no state or federal permit is required under the Federal Water Pollution Control Act, as amended.

Section 13385 provides:

- (a) Any person who violates any of the following shall be liable civilly in accordance with this section:
 - (1) Section 13375 or 13376.
 - (2) Any waste discharge requirements or dredge and fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

- (c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:
 - (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.
 - (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned

up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

VIOLATIONS

The January 25 and 31, 2008, discharges constitute violations of the NPDES Permit Sections III.A (unauthorized discharge) and III.D (unauthorized bypass), and Attachment G Standard Provisions C.2.h (failure to sample bypass discharge). As a result, Discharger violated Water Code Section 13376 prohibiting discharges in violation of permit requirements.

MAXIMUM POTENTIAL LIABILITY

The maximum potential civil liability for these violations is \$34,160,000, based on the following calculations: Two days of violations, for three separate permit violations on each day at \$10,000/day/violation = 2 days x 3 violations x \$10,000/day/violation = \$60,000 (Water Code Section 13385(c)(1)). Discharge of 2,450,000 gallons – 1000 gallons = 2,449,000 gallons x \$10/gallon = \$24,490,000 (Water Code Section 13385(c)(2)). Discharge of 962,000 gallons – 1000 gallons = 961,000 gallons x 10/gallon = \$9,610,000 (Water Code Section 13385(c)(2)). TOTAL: \$60,000 + \$24,490,000 + 9,610,000 = \$34,160,000.

CONSIDERATION OF FACTORS UNDER 13327 AND 13385(e)

1. Nature, circumstances, extent and gravity of the violation

a. January 25, 2008, discharge

This discharge resulted in a significant volume of partially treated waste being discharged to surface waters. The discharge occurred as a result of a system unable to handle heavy inflow volume compounded by understaffing. The peak influent flow on January 25 was 44 MGD, while the WWTP's capacity is 24.7 MGD. This resulted in the operation of the WWTP to relieve the system by sending a large volume of the inflow to the equalization or "emergency" ponds. The ponds, in turn overflowed via an unpermitted pipe. This diversion of flow could not properly qualify as a bypass under the NPDES permit provisions because SASM failed to give the Regional Water Board prior notice and failed to conduct appropriate sampling, as required. Moreover, it is apparent that the discharges were avoidable through better planning, facility improvements and repairs, adequate storage, and larger staffing.

b. January 31, 2008, discharge

This discharge occurred in part because of understaffing and miscalculations about the intensity of the rain event that day. The circumstances were aggravated by a breakdown in the WWTP's alarm reporting system. While SASM apparently expected that its personnel would be contacted while away from the WWTP by phone by the alarm company (once it received an alarm signal of an emergency at the WWTP), the alarm company responsible for those contacts reports that it was only obligated to conduct limited contact service. The breakdown allowed the high volume of rainfall to enter the facility for a long period of time and to eventually overwhelm the system. When staff at home eventually determined without being notified by the alarm company that an overflow was likely, he was able to respond to the discharge by turning on additional pumps that had been left in an off setting. Again, sampling was not conducted after the discharge. SASM reports that this was because of safety concerns. However, State Water Board investigators were unable to confirm the existence of the asserted safety concerns.

Both these bypasses were avoidable had SASM taken appropriate measures in advance of the rain events. Given that the sampling was not conducted for either, it is impossible to determine the actual harmful impacts on the bay from the discharge. However, any discharge of untreated or partially treated sewage would be expected to raise the level of coliform and other pollutants in the receiving waters, and is prohibited by the permit and by law. Following the January 31 discharge, the Marin County Health Department took receiving water samples, and posted warnings against human contact with the water and closed public beaches in the area until February 6, 2008. Similar action by the County likely would have been taken had SASM provided proper notice of its January 25 discharge.

2. Whether the discharge is susceptible to cleanup or abatement

The untreated or partially treated material was discharged into the inlet, then to the bay. It was not recoverable. Instead, the Regional Water Board would look to SASM to prevent such discharges.

3. The degree of toxicity of the discharge

The untreated or partially treated material would be expected to have a deleterious effect on the environment, including causing potential nuisance in the near shore areas. However, given the intensity of the rainfall during both events, some of the toxic effect was likely reduced. Failure of SASM to sample at the appropriate location deprived the Regional Water Board staff and other responding agencies of information that may have been useful in fully assessing impacts to the environment. SASM should not be rewarded

for this failure. Timely and appropriate sampling would have been SASM's opportunity to show minimal impacts, if that were the case. In the absence of proper sampling, any assumptions about the impacts of the spill should not go toward decreasing the amount of the assessment, but rather, toward a higher assessment.

4. The violator's ability to pay

SASM has an annual operating budget of over \$2.3 Million for fiscal year 2007/2008. SASM has authority to adjust its rate scale to provide for financial needs. SASM has not provided any information indicating that it would be unable to pay the recommended assessment.

5. The effect on the violator's ability to continue in business

Again, SASM has the authority to adjust its rates to accommodate its financial needs. No information has been provided indicating that SASM would be unable to continue its business if it pays the recommended assessment.

6. Any voluntary cleanup efforts undertaken

SASM did not report any voluntary cleanup efforts as to either discharge, except those within the WWTP itself.

7. Any prior history of violations

Given the design and operation of the WWTP, the investigation concluded that it is likely that events similar to the January 25 discharge have occurred in the past.

The Regional Water Board's records show these past violations:

- January 4, 2008, bypass of secondary treatment units for a portion of the wastewater due to high influent flows in violation of permit prohibition, and violation of total coliform effluent limitation.
- December 31, 2005, 37 million gallon bypass of screened, untreated sewage.
- December 30, 2005, 32.5 million gallon bypass of screened, untreated sewage

Both of the above incidents in 2005 occurred during extreme wet weather flooding when Marin County was in a state of emergency.

8. The degree of culpability

SASM, like all other treatment plants within the San Francisco Bay Region, are required to maintain a Contingency Plan pursuant to Regional Water Board Resolution 74-10. This requirement is imposed directly on SASM in its NPDES Permit, Provisions VI, C.6.c. SASM was required to maintain the Plan as prudent in accordance with current publicly-owned wastewater facility emergency planning. Marin County wastewater agencies have a history of being impacted by storm-related events. All wastewater permittees are prohibited from discharging pollutants in violation of permit limits. If a discharger subject to the Resolution fails to develop and/or adequately implement a contingency plan, the Regional Water Board has said that is the basis for considering such a discharge a willful and negligent violation of the NPDES permit pursuant to Section 13387 of the California Water Code.

SASM is further required to regularly review, and update as necessary, the Contingency Plan in order for the plan to remain useful and relevant to current equipment and operation practices. Reviews must be conducted annually, and updates completed as necessary. SASM does not have a stand-alone plan, but instead relies upon outdated and irrelevant information contained in the 1984 Engineering Design document which dates back to when the present facility was constructed. When storm events occurred in January 2008, SASM staff decisions were not well-planned or executed with deliberation. Instead, errors of judgment contributed significantly to the inability to meet the terms and conditions of the SASM discharge permit.

SASM is required to submit a report describing the current status of its Contingency Plan review and update by June 30 of each year. The annual report is to include a description or copy of any completed revisions, or a statement that no changes are needed. SASM has repeatedly failed to comply with this requirement. This failure is central to permit accidents and mistakes of judgment during the January 2008 storm events. A relevant, current Contingency Plan would have driven staff operational choices and appropriate storm-related sampling, thereby assuring compliance with discharge requirements.

SASM is fully culpable for the events described herein. With respect to the January 25 discharge, SASM has been aware for years of the potential for high inflow volume to exceed the WWTP's capacity. It has nonetheless operated that way for a number of years despite this threat. SASM personnel failed to report its intent to bypass the high inflow volumes that day despite clear evidence that it was likely to bypass. Compounding this failure, SASM also failed to conduct the appropriate sampling that is required under the NPDES permit and the federal regulations. Its O&M Manual and SASM's staff training apparently was not clear enough to the staff that they would be aware of the appropriate sampling points following a "bypass." While the Lab

Director had set up procedures for such sampling, somehow, SASM failed to assure that its personnel properly conducted such sampling. Furthermore, any fault with the alarm company's performance is a matter between SASM and the alarm company. SASM remains responsible to assure that it operates its system to avoid unpermitted discharges, including the proper performance by contractors. SASM should not be rewarded for its failure to upgrade its WWTP and collection system if necessary, to properly train its staff, and to assure that its contractors perform their proper functions or a suitable alternative system is put into place.

9. Economic Benefit of savings, if any, resulting from the violation

SASM was able to realize financial savings by not taking actions to prevent the discharges. Facts concerning economic savings affect the final assessment in that the Regional Water Board is required to recover economic benefit as a minimum pursuant to Water Code Section 13385(e). However, Regional Water Board staff currently has limited information concerning SASM's economic savings. Despite this, a best estimate was developed based on the categories discussed below.

a. Plant upgrades

At a minimum, SASM should have increased the holding capacity of its equalization ponds. The severe rain storms were foreseeable and predictable. It was foreseeable that the amount of rain could exceed the present ponds' capacity. SASM is now in the process of having the ponds enlarged to gain increased capacity. This is expected to reduce the likelihood of overflow discharges. It had budgeted \$380,000 for an enlargement in fiscal year 2007/2008, but has not yet started this project. Also, the project currently being contemplated will only increase the capacity by 1 MG, which will not be adequate in preventing future discharges in the event of rainstorms of the magnitude that occurred in January 2008. SASM may have to consider additional upgrades to its system to address the high flow volume. One option is to build facilities that will increase the current storage capacity by about 150 percent, or 2.5 MG. At a minimum, this would cost 1.5 times the cost of the current project to increase capacity by 1 MG.

b. Increase in staffing during rain events

The magnitude of the January 2008 discharges could likely have been substantially reduced if SASM had had more staff to monitor the amount of rain coming down and properly operated its WWTP systems during the events. The Regional Water Board staff does not have sufficient detailed information to make reliable conclusions about the number and grade of additional staff necessary to properly operate the system during the rainy

season. However, as an example of improved staffing, in all likelihood, the alarm company notification failure could have been avoided if SASM employed a person to remain at the WWTP instead of relying on an off-site contractor. SASM is responsible for making sure that it conducts its own assessments of staff needs in order to prevent discharges and meet NPDES permit requirements. Based upon the investigation, it appears that the discharges could have been prevented had SASM had in place additional, properly trained staff.

c. Staff training improvements

Again, SASM is solely responsible to assure that its staff is fully and properly trained. The events of January 2008 suggest that this was not the case. There were failures in pump operations, reporting and in monitoring. It is clear that SASM has failed to provide its staff with training, for example, about the NPDES permit requirements. Training could have helped to prevent the discharge and their effects on the environment. SASM realized an unknown savings by failing to conduct appropriate and timely training in system operations, reporting and monitoring.

d. O&M Improvements

SASM could have made Operating and Maintenance improvements that would likely have reduced the magnitude of the discharges that occurred in January 2008. However, the cost of those improvements is unknown.

e. Alarm system upgrades

The system that SASM utilizes costs \$65 per month. The system proved unreliable during the storm on January 31, 2008. The cost of an upgraded system is unknown.

Overall, the Regional Water Board staff estimates the economic savings to be at least \$545,600. This is based on two categories of deferred costs: storage upgrades, and increased staffing.

For storage upgrades, Regional Water Board staff estimates that SASM saved at least \$190,000 in from deferred expenditures to build adequate storage. This is based on the estimate total cost for storage (\$380,000 + \$570,000) at 10% interest for two years, which is the time frame since the last discharge of this nature (see #7 above) that should have alerted SASM to the need for increased storage.

For increased staffing, Regional Water Board staff estimates that SASM saved \$355,600 by understaffing its WWTP. SASM should have employed an

additional treatment plant operator to assist in operating the WWTP and an additional maintenance worker to keep up on necessary repairs. Had these additional two positions been filled, SASM's General Manager would have been in a better position to plan and manage overall operations, update plans and manuals, and provide staff training, all of which could have avoided the poor judgments made before and during the events. According to the AFSCME MOU effective July 1, 2008, the monthly salary for those positions would be \$5,573 and \$4,304 per month, respectively. Applying a 1.5 factor to account for benefits, etc., the positions would cost \$8,359 and \$6,456 per month. Annually, the positions would cost combined \$177,800. This becomes \$355,600 using two years, which is the time frame since the last discharge of this nature (see #7 above) that should have alerted SASM to the need for increased staffing.

10. Other matters as justice may require

The relatively low capacity to handle influent flows given the potential for comparably high amounts of rainfall signals a lack of advance planning and a lack of proper expenditures to accommodate the WWTP's needs. SASM also failed to take proper action once the discharges occurred by failing to properly report the one on January 25 and failing to sample both discharges to determine their impacts.

PROPOSED CIVIL LIABILITY

Based upon consideration of the factors in Sections 13327 and 13385, the Assistant Executive Officer proposes civil liability be imposed upon SASM in the amount of \$1,600,000.

Dyan C. Whyte
Assistant Executive Officer

August 11, 2008
Date

Attachment: Waiver of Hearing

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 September 10, 2008.

- ☐ 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. R2-2008-0070 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 the right of Sewerage Agency of Southern Marin to be heard, and to argue against the allegations made by the Assistant 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. R2-2008-0070, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$800,000 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 the date specified 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 Assistant Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Assistant Executive Officer, I agree to pay the suspended penalty amount within 30 days of the date of the letter from the Assistant 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 Assistant 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 Assistant 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