

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2006-0115

For

Violation of Clean Water Act, Section 401, Water Quality Certification

In the Matter of
City of Santa Rosa
Geysers Recharge Project
WDID No. 1B01041WNSO

Sonoma County

The Executive Officer of the California Regional Water Quality Control Board, North Coast Region (hereinafter the Regional Water Board), hereby gives notice that:

1. On May 18, 2000, the Regional Water Board issued a permit to discharge storm water associated with construction activity to the City of Santa Rosa (hereinafter the Discharger). The permit was issued under the statewide National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated With Construction Activity (Construction General Permit), Water Quality Order 99-08-DWQ (WDID No. 149S313237) for construction of the Geysers Recharge Project, Sonoma County, California (Site). The Construction General Permit prohibits the discharge of nonstorm water pollutants.
2. The Regional Water Board Executive Officer issued a Waiver of Waste Discharge Requirements and Conditional Certification pursuant to Clean Water Act Section 401 (Water Quality Certification) to the Discharger for the Windsor pipeline segment of the Geysers Recharge Project (GRP) on August 31, 2001 (WDID No. 1B01041WNSO).
3. The Discharger began construction on the GRP in summer 2000. On February 23, 2001, contract work began on the Starr Creek stream-crossing located in the Windsor pipeline segment of the GRP. The Starr Creek crossing was to be completed by September 2002. It included placement of a Town of Windsor sewer main in the same trench as the Discharger's pipeline. Concurrent placement of the sewer main with the pipeline would eliminate future disturbance at the Starr Creek crossing. In October 2002, as-built and video inspection of the sewer main revealed grade misplacement and a sag that would require replacement. Contract issues between the Discharger and contractor concerning the follow-up repair work resulted in delays for two years until the agreed upon work schedule of September 30, 2004 to October 7, 2004, to do the corrective work. The scheduled work went beyond the completion date, and on October 11, 2004, a broken water main flooded the creek channel and construction activities at the stream crossing. Regional Water Board staff observed during

October 19 through 26, 2004, rain storms further delayed construction of the sewer main repair work.

4. In early 2004, the Discharger completed all construction on the GRP pipeline and submitted a Notice of Termination (NOT) dated April 25, 2004. The NOT stated that the Discharger had completed construction of all segments of the GRP and all elements of its Storm Water Pollution Prevention Plan as of March 19, 2004. Regional Water Board staff approved the NOT by letter dated May 19, 2004. This action constituted notice that the Discharger was no longer authorized to discharge storm water associated with construction activity under the Construction General Permit.
5. Staff review of the file and chronology of storm water monitoring inspections and meetings regarding the Starr Creek sewer main replacement reveal the following chain of events:
 - a. October 19, 2004, Site conditions observed during intense rainfall events include:
 - Many unprotected earth stockpiles adjacent to Starr Creek;
 - Unstaked straw blankets and wattles between the earth piles and creek;
 - Eight to ten feet wide trench excavated and shored across the creek (See Photo) channel; trench extended 20 feet along the west bank and 10 feet into the east bank of Starr Creek; east bank failures and collapsed shoring;
 - Sections along north end of east bank were undercut and releasing soil into the creek;
 - Starr Creek stream flows were very turbid both upstream and downstream of the trench excavation;
 - Upland areas with exposed surface soil disturbed by heavy equipment and no erosion control measures in place to stabilize the loose surface soil areas; and
 - b. October 21, 2004 during ongoing rainfall events, Staff conducted on-site follow-up with the Discharger and acknowledged as follows:
 - An existing trench four feet wide across the creek channel;
 - A sandbag coffer dam with pipeline to divert stream flow over the trench; disturbed areas including denuded stream banks, earth piles and upland areas left unprotected from erosion and sediment runoff;
 - Staff directed Discharger to stop work and provide a written site remediation plan for implementing winter stabilization measures to secure the site and prevent further scouring and erosion in the creek.
6. On October 22, 2004, the Discharger submitted a site remediation plan that called for filling and compacting the trenches, placing straw blankets and rock rip-rap on the bottom and slopes of the creek, scarifying and hydroseeding exposed soil areas, and placing straw wattles for drainage control. Regional Water Board

staff verbally approved this plan as an emergency measure to stabilize the creek bank through the winter.

7. On January 23, 2005, the Regional Water Board Executive Officer issued a letter requesting information and Technical Report pursuant to Water Code section 13267. On January 27, 2005, the Discharger submitted its Technical Report describing in detail the circumstances surrounding the sewer replacement project and the sediment discharge to Starr Creek.
8. The following facts are the basis for the alleged violations in this matter:
 - a. The Discharger's Water Quality Certification permit required written notification to the Regional Water Board prior to commencement of work. The Discharger did not notify Regional Water Board staff of the need to perform remedial (warranty repair) work related to the GRP and resumed work in Starr Creek.
 - b. Erosion and sediment control efforts on the Starr Creek sewer repair work were inadequate. The minimal sediment control measures (measures employed in an attempt to remove sediments from storm water runoff) were installed on the day that the storm started, instead of in advance of the storm. The lack of in-place erosion control measures and inadequate sediment control measures caused significant sediment discharges from the site.
 - c. The attached photograph clearly depicts site conditions and the soil discharge on October 19, 2004.
 - d. The Water Quality Certification Permit contains the following conditions:
 - i. Additional Condition 1. The RWB shall be notified in writing two weeks prior to the commencement of work, with details regarding the construction schedule, in order to allow staff to be present on-site during construction, and to answer any public inquiries that may arise regarding the project.
 - ii. Additional Condition 2. Construction work shall comply with the provisions in the Water Quality Control Plan for the North Coast Region.
 - iii. Additional Condition 3. A copy of this permit must be provided to the contractor and all subcontractors conducting the work, and must be in their possession at the work site.
 - iv. Additional Condition 4. If, at any time, a discharge to surface waters occurs, or any water quality problem arises, the project will cease immediately and the Regional Water Board will be notified promptly.

- e. Provisions of the Basin Plan that are applicable to this project are as follows:

DISCHARGE PROHIBITIONS:

The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.

The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.

9. During the October 19, 2004 project site inspection, Staff observed evidence of sediment discharges into Starr Creek, which were causing conditions of pollution and/or nuisance. The receiving waters have been listed as impaired due to excessive amounts of sediment. The Discharger violated Additional Condition 2 of its Water Quality Certification permit and the Basin Plan provisions cited in Finding 8.e. above by placing unprotected dirt piles and earthen materials in a manner susceptible to erosion and discharging soil and sediment-laden storm water runoff to state waters. The Discharger violated Additional Condition 1 by failing to notify the Regional Water Board prior to commencement of work. The Discharger violated Additional Condition 4 by failing to notify the Regional Water Board of the sediment discharge to surface waters. During the October 21, 2004 project site inspection, the Discharger and the Discharger's contractor did not have a copy of the Water Quality Certification as required by Additional Condition 3.
10. Water Code section 13385, subdivision (a)(4) provides for the imposition of civil liabilities against dischargers who violate any order or prohibition issued pursuant to Water Code section 13243 or Article 1 of Chapter 5. As detailed above, the City of Santa Rosa violated the discharge prohibitions and requirements of the Basin Plan and Water Quality Certification. Water Code section 13385, subdivision (c) provides that the maximum amount of civil liability that may be imposed by the Regional Water Board is \$10,000 per day of violation, plus where there is discharge in excess of 1,000 gallons that is not susceptible to cleanup or cannot be cleaned up, an additional liability not to exceed \$10 per gallon of waste discharged and not cleaned up in excess of 1,000 gallons.

There is evidence that sediments discharged from this site to Starr Creek on the evening of October 18, 2004. A significant volume of turbid storm water runoff was discharged from the Site into state waters; however, the discharge volume associated with these violations has not been determined. The calculation of a discharge volume would increase the maximum liability. This Complaint is based only on the documented discharge that occurred on October 19, 2004.

The maximum civil penalty that could be imposed against the City of Santa Rosa in this matter is calculated as follows:

One day of observed discharge (October 19, 2004) X \$10,000 per day = \$10,000
Total Potential Civil Liability: \$10,000

11. In determining the amount of any civil liability, pursuant to Water Code, section 13385, subdivision (e), the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violation; and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. The Regional Water Board is also required to consider the requirement in this section that states that, at a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.
- a) Nature, circumstances, extent and gravity of the violation: The Discharger's contractor was actively working in Starr Creek after October 15 and when intense rain storms were imminent. The presence of a trench across Starr Creek and areas of unvegetated stream banks during a significant storm caused suspended sediment to be discharged into Starr Creek. The Discharger's erosion and sediment control efforts were inadequate to prevent the discharge of sediment-laden storm water runoff. Sediment in creek is detrimental to fish, fish spawning areas and can destroy aquatic habitat and reduce stream flows. Starr Creek is listed as impaired due excessive amounts of sediment.
 - b) Susceptibility to Cleanup or Abatement and Voluntary Cleanup Efforts Undertaken: The sediment discharge to Starr Creek was not susceptible to cleanup or abatement; therefore, no cleanup efforts were attempted.
 - c) Violator's ability to pay: Staff has no information to indicate that the Discharger would be unable to pay any imposed administrative civil liability.
 - d) Prior history of violations: The Discharger has no history of prior violations in regard to the GRP. The Discharger complied with its permits during the earlier construction of the GRP.
 - e) Degree of culpability: The Discharger held a construction storm water permit and a water quality certification permit during the construction of the GRP, thus the Discharger was aware of the need to conduct construction work with appropriate permits, scheduling and notifications to the Regional Water Board. Even if the Discharger assumed that its Water Quality Certification Permit was active and applicable to the sewer repair work, written notification is a condition of the Water Quality Certification. Such notification would likely have resulted in a better outcome with regard to scheduling of the sewer repair work.

- f) Economic benefit: Without staff's discovery of this project and resultant intervention, there would have been an economic benefit derived from avoiding the installation and maintenance of adequate erosion and sediment controls.
 - g) Other matters that justice may require: Staff costs associated with this enforcement action are estimated to be \$4,000.
12. On February 19, 2002, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2002-0040 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on July 30, 2002. The Enforcement Policy establishes a framework for identifying and prioritizing instances of noncompliance and responding with appropriate enforcement action relative to the nature and severity of violations.
13. The issuance of this complaint is an enforcement action to protect the environment and is, therefore, exempt from provisions of the California Environmental Quality Act (Public Resources Code sections 21000 et seq.) pursuant to title 14, California Code of Regulations, sections 15308 and 15321, subdivision (a) (2).

THE CITY OF SANTA ROSA IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Water Board proposes that the City be assessed an administrative civil liability in the amount of \$10,000.
2. A hearing shall be conducted on this Complaint by the Regional Board on February 8, 2007 unless the City waives the right to a hearing by signing and returning the waiver form attached to this Complaint. By doing so, the City agrees to pay the \$10,000 in full to the State Water Pollution Cleanup and Abatement Account within 30 days of the date of this Complaint.
3. If the City waives the hearing and pays the liability, the resulting settlement will become effective on the next day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint, reissue it as appropriate, or take other appropriate action.
4. If a hearing is held, the Regional Water Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liabilities, or other remedies as appropriate.

5. Regulations of the United States Environmental Protection Agency (USEPA) require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act, including NPDES Permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.

Ordered by _____

Catherine E. Kuhlman
Executive Officer

December 11, 2006