

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION**

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| In the Matter of: |) | Complaint No. R1-2011-0048 |
| |) | for |
| North Bay Construction, Inc. |) | Administrative Civil Liability |
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This Administrative Civil Liability Complaint (Complaint) is issued to North Bay Construction Inc. ("North Bay Construction") to assess administrative civil liability for discharges of waste in violation of provisions of law for which the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) may impose civil liability pursuant to California Water Code (CWC) Section 13350 or, in the alternative, CWC Section 13385. The Complaint alleges that North Bay Construction caused a discharge of untreated or partially treated wastewater to waters of the United States, in violation of: (1) Prohibition C.1 of State Water Resources Control Board Order No. 2006-003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*; or, in the alternative, (2) Section 301 of the Clean Water Act (33 U.S.C. § 13411) and CWC Section 13376.

The Assistant Executive Officer of the Regional Water Board hereby gives notice that:

1. North Bay Construction is alleged to have violated provisions of law for which the Regional Water Board may impose administrative civil liability under CWC Section 13350 or, in the alternative, CWC Section 13385. The Complaint proposes to assess \$519,990 in administrative civil liability for the violations cited based on considerations described herein.
2. This Complaint is issued under authority of CWC section 13323.
3. A hearing concerning this Complaint may be held before the Regional Water Board within ninety (90) days of the date of issuance of this Complaint, unless, pursuant to CWC section 13323, North Bay Construction waives its right to a hearing. The waiver procedures are specified in the attached Waiver Form. The hearing in this matter is scheduled for the Regional Water Board's regular meeting on June 23, 2011, at the Regional Water Quality Control Board Office, 5550 Skylane Blvd., Santa Rosa, California. North Bay Construction, or its designated representative, will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Water Board. An agenda for the meeting will be available at:

http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/

not less than 10 days before the hearing date.

4. If a hearing is held on this matter, the Regional Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to

refer the matter to the Attorney General for recovery of judicial civil liability. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

STATEMENT OF APPLICABLE PROHIBITIONS AND REQUIREMENTS:

5. Prohibition C.1 of State Water Resources Control Board Order No. 2006-003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, provides that any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.
6. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and CWC Section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.

ALLEGED VIOLATION OF PROHIBITIONS AND REQUIREMENTS:

7. North Bay Construction caused the discharge of 142,500 gallons of untreated wastewater to the Laguna de Santa Rosa on January 20, 2010, in violation of Prohibition C.1 of State Water Resources Control Board Order No. 2006-003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, and in violation of Section 301 of the Clean Water Act (33 U.S.C. § 1311) and CWC section 13376.

FACTUAL BASIS FOR THE ALLEGED VIOLATIONS

The following evidence supports the alleged violation described above:

8. The City of Sebastopol (City) owns and operates a sewage collection system that discharges to the City of Santa Rosa's sub-regional wastewater treatment plant.
9. In 2008, the City contracted with North Bay Construction to carry out the Laguna Force Main Replacement Project (Project) (Contract No. 2008-02). The Project consisted of the construction of a 14-inch sanitary sewer force main, associated valves, vaults and inter-tie structures, abandonment of existing force main/manholes, jack and bore installation under Highway 12, installation of a dissipating chamber, and environmental mitigation measures. The Project was completed in November of 2008.
10. On January 20, 2010 at 11:37 a.m., the City received a report of water surfacing and flowing to Meadowlark Field, east of Laguna de Santa Rosa, and north of Highway 12.
11. Following the notification of the spill, the City alerted its Public Works and Engineering staff and contacted its consulting engineer, and requested that they respond to the scene. All appropriate agencies were notified within the hour, including the Regional Water Board, County Environmental Health and downstream water users. Pumper trucks were mobilized to collect wastewater and haul it to the treatment and disposal

system. The spill was fully contained about 10 hours after the City learned of the overflow.

12. The City determined that the spill had originated from a portion of the pressurized sewer main which conveys wastewater from the City's sanitary sewer collection system to the City of Santa Rosa's Laguna Treatment Plant and was caused by the failure at a joint between two pipes of differing sizes and materials.
13. The pipe joint which caused the spill had been replaced as part of the City's Laguna Force Main Replacement Project.
14. The approved plans for the City's Laguna Force Main Replacement Project show a system of restrainers and tie rods to prevent the pipe sections from separating during pressure variations when pumping. A change proposal approved by the City's engineer detailed an alternate method of restraint.
15. The City's spill report for the incident, submitted to the Regional Water Board on March 18, 2010, says that "The particular joint in question, however, was not constructed according to the plans and the RFI, and subsequently failed." As originally constructed, a critical component of the joint was not installed, resulting in the failure.
16. The pipe joint that failed, resulting in the discharge, was installed by North Bay Construction.

WATER CODE AUTHORITY FOR IMPOSING ADMINISTRATIVE CIVIL LIABILITY

17. Pursuant to CWC Section 13350(a), any person or entity, who, in violation of any Waste Discharge Requirements issued by the State Water Board, discharges waste, or causes or permits waste to be deposited where it is discharged, into waters of the state, is subject to administrative civil liability pursuant to CWC Section 13350(e), either (1) on a daily basis not to exceed five thousand dollars (\$5,000) for each day the violation occurs; or (2) on a per gallon basis in an amount not to exceed ten dollars (\$10) per gallon of waste discharged.
18. Pursuant to CWC Section 13385(a), any person who violates CWC Section 13376 or any requirements of Section 301 of the Clean Water Act is subject to administrative civil liability pursuant to CWC Section 13385(c), in an amount not to exceed the sum of both the following: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs; and (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.
19. The discharge caused by North Bay Construction constitutes a violation under CWC Section 13350, or, in the alternative, CWC Section 13385.

- a. The maximum liability that the Regional Water Board may assess pursuant to CWC Section 13350(e) is \$1,425,000 calculated using the per gallon option.
 - i. $142,500 \text{ [gallons discharged]} \times \$10 \text{ [per gallon]} = \$1,425,000$
- b. The maximum liability that the Regional Water Board may assess pursuant to CWC Section 13385(e) is also \$1,425,000.
 - i. $141,500 \text{ [gallons discharged but not cleaned up in excess of 1,000 gallons]} \times \$10 \text{ [per gallon]} + 1 \text{ [day of violation]} \times \$10,000 \text{ [per day of violation]} = \$1,425,000$

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

20. On November 17, 2010, the State Water Resources Control Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in CWC Section 13351 and CWC Section 13385(e). The entire Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

The specific required factors in CWC Section 13351 and 13385(e) are the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, and the degree of toxicity of the discharge. With respect to the violator, the required factors are the ability to pay, the effect on the violator's ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation and other matters that justice may require.

The specific factors required by the Enforcement Policy are: the potential harm to beneficial uses; the physical, chemical, biological or thermal characteristics of the discharge; the discharge's susceptibility to cleanup; the violation's deviation from requirements; the discharger's culpability; cleanup and the discharger's cooperation; the history of violations; the discharger's ability to pay; other factors as justice may require; and economic benefit from the avoidance or delay of implementing requirements. These factors address the statute-required factors and also are used to calculate penalties consistent with both the CWC and the Enforcement Policy.

The required factors have been considered for the violation using the methodology in the Enforcement Policy, as explained in detail in Attachment A.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

21. Based on consideration of the above facts and after applying the penalty methodology, the Assistant Executive Officer of the Regional Water Board proposes that civil liability be imposed administratively on North Bay Construction in the amount of \$519,990 for the violations of CWC Section 13350 or, in the alternative, violations of CWC Section 13385. The proposed liability includes \$15,525 for staff costs.
22. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to “actions” and “special proceedings” and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees’ Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)
23. Notwithstanding the issuance of this Complaint, the Regional Water Board retains the authority to assess additional penalties for violations of the requirements of waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
24. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

April 7, 2011
Date

Luis G. Rivera
Assistant Executive Officer
Regional Water Board Prosecution Team