

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

REVISED COMPLAINT NO. R2-2009-0016

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
SANITARY SEWER OVERFLOW
EAST BAY REGIONAL PARK DISTRICT
DEL VALLE REGIONAL PARK
ALAMEDA COUNTY

This Complaint is issued to the East Bay Regional Park District (hereinafter “Discharger”) to assess administrative civil liability pursuant to California Water Code (“CWC”) Section 13350 and Section 13323. The Complaint addresses a discharge of untreated wastewater resulting from a sanitary sewer overflow (“SSO”) at its Del Valle Regional Park. The Discharger violated State Water Resources Control Board (“State Water Board”) Order No. 2006-0003 DWQ, Statewide General Waste Discharge Requirements (“WDR”) for Sanitary Sewer Systems. The violation cited herein occurred on July 15, 2008.

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

1. The Discharger is alleged to have violated provisions of law for which the Regional Water Board may impose civil liability pursuant to CWC Section 13350 and Section 13323. This Complaint proposes to assess \$3,900 in penalties for the violation cited based on the considerations described herein. The deadline for comments on this Complaint is November 6, 2009, 5 p.m.
2. The Discharger owns and operates a sanitary sewer collection system (collection system) consisting of approximately 0.8 miles of gravity sanitary sewer lines, 1.6 miles of forced mains, and 6 pump stations. The collection system serves an approximate population of 1,100 consisting of transient, mostly summer populations of campers and RVs, and one private residence. Wastewater flows through areas adjacent to Lake Del Valle and Arroyo Del Valle Creek to two sewer treatment ponds maintained by the Discharger.
3. This Complaint is issued to address an approximately 3,200 gallon SSO, which discharged to groundwater (a water of the State) and surface water (a water of the State and United States). The SSO occurred on July 15, 2008, and was caused by a pipe failure.
4. Unless waived, the Regional Water Board will hold a hearing on this Complaint at its December 9, 2009, meeting, at the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland. The Discharger or its representative will have an opportunity to be heard and contest the allegations in this Complaint and the imposition of civil liability. An agenda for the meeting will be mailed to the Discharger no less than 10 days before the hearing date. At the hearing, the Regional 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.

5. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by paying the civil liability in full.

ALLEGATIONS

1. On July 15, 2008, the Discharger reported to the Regional Water Board an SSO from its sewer collection system between Lift Stations 4 and 5.
 - a. On July 12, 2008, an off-duty park ranger hiking near Arroyo Del Valle Creek in Del Valle Regional Park discovered a patch of wet soil.
 - b. On the evening of July 14, upon arriving to work the park ranger reported the location to another park ranger, who went to the site and noticed an area of wet soil but no flow emanating from this area.
 - c. On July 15, upon notification by the park rangers, the Park Supervisor investigated the situation and found a small flow which was coming out of the ground and moving down an embankment into Arroyo Del Valle Creek.
 - d. During the investigation, the Park Supervisor turned off the Lift Station 5 pump. As a result, the small flow stopped and the Park Supervisor realized that it was an SSO.
 - e. Within two hours of discovering it was an SSO, the Discharger notified Regional Water Board staff, initiated cleanup efforts, and conducted sampling to determine water quality impacts.
 - f. The Discharger was able to recover approximately 1,068 gallons of accumulated surface sewage and sewage-impacted groundwater using a sewage pumper truck to divert the sewage into the sewer treatment ponds.
 - g. On the same day, the Discharger closed public access to the southern area of Lake Del Valle and downstream portions of Arroyo Del Valle Creek.
 - h. On July 15, fecal coliform and e. coli sampling results were above health standards at the SSO site, located in the southern area of Lake Del Valle.
 - i. The Discharger reopened the Lake (area South of the marina) on July 17 and the Creek on July 21, when laboratory data indicated that bacteria concentrations were back to normal.
 - j. After excavating large amounts of soil, the Discharger discovered that the SSO was caused by a collection system force main that had failed longitudinally.
 - k. The Discharger estimated the overall volume of sewage released from the broken pipe to be about 22,260 gallons.
 - l. Of this volume, approximately 320 cubic yards of soil, containing approximately 18,000 gallons of sewage, were removed from the site and disposed of at a landfill.
 - m. The Discharger calculated the final SSO volume that entered groundwater (a water of the State) and Arroyo Del Valle Creek (a water of the State and United States) to be approximately 3,200 gallons.
 - n. On July 18, 2008, the Discharger completed repair of the collection system pipeline.
2. An SSO is a discharge from a collection system of raw sewage consisting of domestic wastewater. An SSO contains high levels of suspended solids, pathogenic organisms, toxic

pollutants, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants. An SSO causes a public nuisance when untreated wastewater is discharged to areas with public exposure, such as streets, or surface waters used for drinking, fishing, or body contact recreation. An SSO that discharges to land and is not fully cleaned up or contained, may discharge to surface waters and/or infiltrate into groundwaters. SSOs pollute surface water or groundwaters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters.

REQUIREMENTS APPLICABLE TO THE DISCHARGER

1. The Discharger's collection system is regulated by Statewide General Waste Discharge Requirements, Order No. 2006-0003 DWQ, which was adopted by the State Water Board on May 2, 2006. As owner of a collection system, the Discharger is required to comply with the requirements of Order No. 2006-0003 DWQ (or General WDR). The Discharger filed a Notice of Intent for coverage under the General WDR on October 24, 2006. The effective date of the General WDR is November 2, 2006.
2. Order No. 2006-0003 DWQ includes the following prohibitions:

C. PROHIBITIONS

1. *Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.*

WATER CODE PROVISIONS RELEVANT TO THIS DISCHARGE

Pursuant to CWC Section 13350(a) (2), a discharger is subject to civil liability for violating any waste discharge requirements, or causing or permitting waste to be deposited where it is discharged, into the waters of the State. The Regional Water Board may impose civil liability administratively pursuant to CWC, Chapter 5, Article 2.5 (commencing at Section 13323) either on a daily basis or on a per gallon basis, but not both, as follows:

- a. The civil liability on a daily basis may not exceed \$5,000 for each day in which a violation occurred.
- b. The civil liability on a per gallon basis may not exceed \$10 for each gallon of waste discharged.

If this matter is referred to the Attorney General for judicial enforcement, a higher liability of either \$15,000 per day of violation or \$20 per each gallon of discharge may be imposed.

VIOLATIONS

- The July 2008 SSO resulted in a discharge of untreated wastewater to Arroyo Del Valle Creek, a water of the State and the United States, and thus the Discharger violated Order No. 2006-0003 DWQ, Prohibition C. 1.

- The July 2008 SSO discharged to groundwater and Arroyo Del Valle Creek, and thus the Discharger permitted wastes to be discharged to waters of the State.

MAXIMUM LIABILITY

The maximum administrative civil liability the Regional Water Board may impose for the violations is \$31,920 based on the following calculations:

One day of violation for SSO = 1 day x \$5,000/day/violation = **\$5,000**, or
Discharge exceeding 1000 gallons and not cleanup = (22,260 gallons -1068 gallons recovered - 18,000 gallons absorbed into soil removed from site) x \$10/gallon = **\$31,920**

CONSIDERATION OF FACTORS UNDER CWC 13327

In determining the amount of civil liability to be assessed against the Discharger, the Regional Water Board has taken into consideration the factors described in CWC Section 13327. 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 benefit or savings, if any, resulting from the violation, and
- Other such matters as justice may require.

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.

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

Nature

The nature of the SSO was an estimated one day leak of raw undiluted sewage from a broken collection system pipeline. The broken pipeline was buried 12 feet underground. On July 15th, the SSO daylighted when the buried soils around the broken pipeline reached saturation. The SSO leak eventually entered Arroyo Del Valle Creek. The Discharger estimated the volume of sewage released from the pipe to be approximately 22,260 gallons. The Discharger was able to recover about 19,000 gallons of raw sewage by removing sewage-impacted soil and water. The Discharger estimated that the volume of SSO discharged to groundwater or surface water was approximately 3,200 gallons.

Circumstances

The SSO occurred because of a pipe break. The pipe was only nine years old. It failed longitudinally, which is an unusual type of failure. The Discharger assumed that water seeped through the pipe break gradually, eventually building more pressure as the pipe break gradually opened up. The cause of the failure is undetermined, but the Discharger is investigating a manufacturing defect as a possible cause.

Extent

The extent was geographically, and temporally, limited. Out of the 22,260 gallons of raw sewage released through the broken pipe, at most 3,200 gallons went into groundwater and Arroyo Del Valle Creek. The spatial extent of the SSO was limited to the site of release. The temporal extent of the SSO was only one day.

Gravity

The gravity of this SSO is low to medium. The SSO resulted in a small discharge of raw, undiluted sewage to Arroyo Del Valle Creek, which is a tributary to Lake Del Valle. The Lake is an existing municipal and domestic water supply source, and is a popular water recreation area. The SSO significantly impacted the recreational uses of Lake Del Valle because of the precautionary beach closures immediately following the SSO. Fecal coliform samples taken by the Discharger on July 15 at the SSO site were in violation of water contact standards. The beneficial uses of contact water recreation (swimming) and noncontact water recreation (fishing) was lost entirely while the Discharger had to close access to the beaches, for 2 days over the southern portion of the Lake, and for 7 days in Arroyo Del Valle Creek. However, no illnesses were reported. Lake Del Valle at Del Valle Regional Park is used extensively for swimming and fishing. At the height of the summer season, when this overflow occurred, the Park welcomes over 1,000 users per beach on any week-end day and over 2,000 users on holiday week-end days.

In addition to the impacts discussed above, a number of other beneficial uses are listed in the Basin Plan for Lake Del Valle: cold freshwater habitat, fish spawning, warm freshwater habitat, and wildlife habitat. Since this SSO occurred during dry weather, it was undiluted and would pose a higher threat to water quality than a similar spill during wet weather. However, because of the slow rate of the SSO, there were no fish kills or other evidence of immediate impacts to these beneficial uses as a result of this discharge event. Also, because there are no commercial or industrial sources at the Park, the wastewater would have less toxic pollutants that pose long-term impacts from the SSO.

2. Whether the discharge is susceptible to cleanup or abatement

The Discharger abated the discharge by turning off the pump station and excavating 320 cubic yards of sewage-contaminated soil to expose the broken pipeline. The Discharger disposed of the contaminated soil at a landfill. Based on the Discharger's field saturation analysis conducted on September 2, 2009, the saturation capacity of the excavation soil is approximately 28%, meaning that the soil which was removed and disposed of had absorbed

an approximate 18,000 gallons of sewage. In addition, the Discharger recovered an estimated 1,068 gallons of accumulated surface sewage and sewage-impacted groundwater using a sewage pumper truck.

3. Degree of toxicity of the discharge

The degree of toxicity of this SSO was high. Raw undiluted sewage, as compared to treated and/or storm diluted wastewater, typically has about ten times the concentrations of biochemical oxygen demand, trash, total suspended solids, oil and grease, ammonia, and thousands of times the levels of viruses and bacteria (measured in terms of total and fecal coliform). These pollutants exert varying levels of impact on water quality, and, as such, will adversely affect beneficial uses of receiving waters to different extents. Some possible adverse effects on water quality and beneficial uses as a result of an SSO include:

- Adverse impact to fish and other aquatic biota caused by bio-solid deposition, oil and grease, and toxic pollutants common in sewage (such as heavy metals, pesticides, personal care products, and pharmaceuticals);
- Creation of a localized toxic environment in the water column as a result of the discharge of oxygen-demanding pollutants that lower dissolved oxygen, and elevated ammonia concentration which is a demonstrated fish toxicant; and
- Impairment to water contact recreation and noncontact water recreation and harm to fish and wildlife as a result of elevated bacteria levels including pathogens.

4. Ability to pay and effect on ability to continue in business

The Discharger's annual operating budget includes a \$500,000 major maintenance account and a \$300,000 capital account for repairs. Regional Water Board staff believes the Discharger is able to pay the proposed civil liability. Regional Water Board staff proposes a liability that is intended to be fair and consistent with similar violations and past administrative civil liability cases.

The Discharger has an opportunity to submit records of both financial information and assets as evidence of ability to pay upon the issuance of this Complaint and applicable deadlines, indicated herein and in the accompanying public notice.

5. Voluntary cleanup efforts undertaken

The Discharger shut down the pump station that fed the broken line upon discovery of the SSO, and acted expeditiously to repair the broken pipeline. Also, the Discharger voluntarily removed sewage-impacted soil to a hazardous waste facility.

6. Prior history of violations

The Discharger had an SSO in July of 2007, but it discharged entirely to land, and did not reach any surface waters.

7. Degree of culpability

The Discharger is culpable for the violations because it is responsible for the proper operation and maintenance of its collection system. However, the Discharger's degree of culpability is low for two reasons. First, because of its small size, it is not currently required to perform routine inspection of its collection system pipeline. Second, because of the longitudinal nature of the pipe failure, it appears that the failure may be the result of a manufacturing defect and the Discharger could not have prevented it from occurring.

8. Economic benefit or savings

There is no evidence that the Discharger gained economic benefit or savings. In addition, the Discharger spent in excess of \$100,000 by sending sewage-contaminated soil away to a hazardous waste facility in Bakersfield. The Discharger could have avoided this high expense by disposing of the soil at a municipal landfill instead of a hazardous waste facility.

9. Other such matters as justice may require

The Discharger acted with due diligence once the SSO was discovered. The Discharger is in the process of upgrading the Del Valle Regional Park collection sewer system. All sewer lift stations have been replaced with modern equipment and will be supplemented with state of the art electronic panels and SCADA control for remote and local monitoring, communication and control. The Discharger claims the upgrades will result in minimizing the occurrence of future SSOs.

10. Staff Time

Regional Water Board Staff time to prepare the Revised Complaint and supporting evidence is estimated to be about 14 hours. Based on an average cost to the State of \$150 per hour, the total staff cost is \$2,100.

CEQA EXEMPTION

The issuance of this Complaint is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.

October 8, 2009

Date

Dyan C. Whyte
Assistant Executive Officer