

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

In the Matter of:)	
)	COMPLAINT NO. R2-2008-0098
)	for
City of St. Helena)	ADMINISTRATIVE
1480 Main Street)	CIVIL LIABILITY
St. Helena, Napa County)	
_____)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The City of St. Helena (hereinafter the City or Discharger) is alleged to have violated provisions of the law for which the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Water Board) may impose civil liability pursuant to Section 13385 of the California Water Code (CWC).
2. The Water Board will hold a hearing on this matter on March 11, 2009, in the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California, 94612. The City or its representatives(s) will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Water Board. An agenda will be mailed to the City no less than ten days before the hearing date. The City must submit any written evidence concerning this complaint to the Water Board not later than 5 pm on February 4, 2009, so that such comments may be considered. Any written evidence submitted to the Water Board after this date and time will not be accepted or responded to in writing.
3. At the hearing, the 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.

ALLEGATIONS

4. The following facts are the basis of the alleged violations in this matter:
 - a. On August 13, 2008, a complaint was received from concerned citizens that the City was stockpiling dirt, asphalt, and boulders on a property located on Pope Street next to the Pope Street Bridge on the banks of the Napa River. The complaint was also circulated within the local community, including to City staff, elected officials, and a local newspaper.

- b. In response to the complaint, Water Board staff inspected the stockpile site on August 19, 2008. Staff found uncovered stockpiles at the City's Pope Street Bridge Approach Realignment construction project (the Project). The stockpiling and disturbed areas comprised an area greater than one acre. Projects disturbing one acre or more require coverage under the State Water Resources Control Board's NPDES General Permit for Storm Water Discharges Associated with Construction Activities, Water Quality Order 99-08-DWQ (General Permit). However, the City had commenced construction without obtaining coverage. Based on staff's conversation with the City's Public Works Director during the site inspection, the City was aware of its responsibility to get coverage under the General Permit for the Project; however, it made a decision not to apply for the coverage.
- c. On August 20, 2008, the Water Board's Assistant Executive Officer issued a Notice of Violation (NOV) to bring the City to full compliance and ensure implementation of appropriate erosion and sediment control measures consistent with the General Permit.
- d. On August 19, 2008, following staff's site inspection, the City stated that it filed a Notice of Intent (NOI) to obtain coverage under General Permit and mailed the NOI package to the State Board. Based on the information provided in the NOI, construction began at the Project site on June 3, 2008. Therefore, the City operated without required General Permit coverage from June 3 through August 18, 2008.
- e. On August 28, 2008, the City sent a letter indicating its compliance with the August 20, 2008, NOV. This August 28 letter indicated that the City had developed a Stormwater Pollution Prevention Plan (SWPPP) for the Project, and would implement it on-site effective September 1, 2008.
- f. The City is a Permittee under the State's Small Municipal Separate Storm Sewer System (MS4) NPDES Permit (Order No. 2003-0005-DWQ), which requires the City to implement a program to ensure that all construction projects within the City's jurisdiction, including City and non-City sponsored projects, comply with the provisions of the General Permit.
- g. While the City did obtain General coverage after being reminded of the requirement by staff, it knew, or should have known, of the requirement. The General Permit relies largely on self-reporting, including self-determination of coverage.
- h. Initial grading activities at the Project site commenced on June 3, 2008, and the City operated without General Permit coverage and hence implementation of a proper SWPPP until September 1, 2008. Therefore, the City was in violation of the General Permit for a total of 89 days. These are violations of CWC Section 13385(a) (1), for which administrative civil liability may be imposed.

PROPOSED CIVIL LIABILITY

5. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code 21000 et seq.) in accordance with Section 15321 of Title 14, California Code of Regulations.
6. Under CWC Section 13385(c), the Water Board may impose administrative civil liability for the City's violation in an amount not to exceed:
 - (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.

In this case, since the violation resulted in a limited amount of sediment or other waste being discharged to waters of the State via wind erosion, the maximum civil liability the Water Board may impose is ten thousand dollars (\$10,000) for each day in which a violation occurred. This Complaint addresses violations for the 89 day period from June 3, 2008, through September 1, 2008, with a corresponding maximum potential fine of eight hundred ninety thousand dollars (\$890,000).

7. Under Section 13385(e) of the CWC, the Water Board shall consider the following factors in determining the amount of civil liability to be imposed:
 - a. The Nature, Circumstances, Extent, and Gravity of the Violation:

The General Permit relies on discharger self-determination and self-reporting. The City clearly should have known and should have obtained coverage and complied with the terms of the General Permit. Moreover, the City, as a permittee under the MS4 permit as discussed above, has the responsibility to ensure construction projects within its jurisdiction comply with the General Permit. Where the City itself fails to obtain coverage and comply with the General Permit, it undermines the General Permit program and sends the wrong message to construction proponents within the City on stormwater requirements associated with construction activities.

Failure to obtain coverage under the General Permit precluded the City from complying with its terms, the most substantive being the implementation of the SWPPP which ensures the best management practices are implemented so that stormwater pollutants are not discharged into waters of the U.S. The direct impacts to water quality and beneficial uses associated with the violation were, however, limited due to: (1) the time of year during which the violation took place (dry season), and (2) there was no direct discharge to nor fill of waters of the State because the stockpiles were set back away from the river banks. Also, the stockpiles were not transported onto the property until August 12, 2008.

b. Toxicity of Discharge and Susceptibility to Cleanup:

The City's actions did not result in toxic discharges of waste to waters of the State.

c. Discharger's ability to pay and continue business:

The City has not yet demonstrated an inability to pay the proposed amount. The City's 2008-2009 budget projected revenues of \$16.8 million and expenditures of \$17.7 million. As of June 30, 2008, the City estimated an unreserved General Fund balance of approximately \$3 million.

d. Voluntary cleanup actions taken:

No cleanup was necessary.

e. Prior history of violations:

On April 12, 2006, we issued an NOV against the City for its non-compliance with Reclamation Order No. 87-090 effluent limits and monitoring requirements.

f. Degree of culpability:

Under the Clean Water Act, stormwater requirements are applicable to all construction sites with an acre or more disturbed area. The City is fully culpable for failing to comply with stormwater requirements and obtain coverage under the General Permit.

It should be noted, however, the City was responsive in attaining compliance once the violations were brought to its attention by concerned citizens and Water Board staff. After site inspection and issuance of NOV, the City obtained General Permit coverage and appropriately developed and implemented a SWPPP for the Project. The City subsequently removed the unused stockpiles from the site and stabilized the exposed areas by implementing appropriate erosion and sediment control measures before the beginning of the rainy season.

g. Savings resulting from the violation:

The City has realized cost savings by its delay in obtaining General Permit coverage, including during that delay: failure to pay the permit fee and failure to prepare and implement a SWPPP and associated erosion and sediment control measures. However, such savings were below the proposed liability amount because of the brief time before the City came to full compliance--thus incurring those costs--and the project's limited size.

h. Other matters that justice may require:

Staff time to inspect the site and prepare the NOV, Complaint, and supporting information is estimated to be 30 hours. Based on an average cost to the State of \$125 per hour, the total cost is \$3,750.

Basis for Liability Amount

8. Per CWC Section 13385(e) the following factors in determining an appropriate civil liability amount were considered: the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and with respect to the violator, the ability to pay, the effect on the ability to continue in business, any voluntary cleanup efforts undertaken, and prior history of violations, the degree of culpability, economic benefit or saving, if any, resulting from the violation, and such other matters as justice may require. The proposed liability was derived using this section as a guide as well as the monetary assessment guidance set forth State Water Resources Control Board's Enforcement Policy.
9. The Assistant Executive Officer of the Water Board proposes that an administrative civil liability be imposed in the amount of \$12,650. Of this amount, \$3,750 is for recovery of staff costs and \$8,900 is the proposed liability. This proposed amount is 1% of the calculated maximum amount of \$890,000.
10. The City may submit information demonstrating an inability to pay the proposed liability. Such information should substantively demonstrate that the City cannot, and could not, pay the proposed liability.
11. Further failure to comply with the General Permit or amendments thereof beyond the date of this Complaint may subject the City to further administrative civil liability, and/or other appropriate enforcement actions(s), including referral to the Attorney General.

Dyan C. Whyte
Assistant Executive Officer

December 23, 2008

Date

WAIVER OF HEARING

The City may waive the right to a hearing. If the City wishes to waive the hearing, an authorized person must check and sign the waiver below and return it to the Regional Water Quality Control Board, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, CA 94612. Payment

of the civil liability must be made by **April 10, 2009**. Any waiver will not be effective until **February 4, 2009**, to allow other interested persons to comment on this action.

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WAIVER OF HEARING

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 February 4, 2009.**

- 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. R2-2008-0098 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, Suite 1400, Oakland, CA 94612, within 30 days after the scheduled Hearing date. I understand that I am giving up my right 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 within 90 days.

By checking this box, I hereby waive my right to have a hearing within 90 days after service of the Complaint, but I reserve the right to have a hearing in the future. I agree to promptly engage the Regional Water Board prosecution staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water board delay the hearing so the Discharger and Regional Water Board staff can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing.

Name (print)

Signature

Date

Title/Organization