**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**
**CENTRAL COAST REGION**

In the matter of:

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|---|---|
| **CITY OF MORGAN HILL 2015-2017 SANITARY SEWER OVERFLOWS TO LLAGAS CREEK** | **SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER** |
| | **ORDER NO. R3-2019-0039** |

## SECTION I: INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the California Regional Water Quality Control Board, Central Coast Region, Prosecution Team (Prosecution Team), and the City of Morgan Hill (City or Settling Respondent) (collectively Parties), and is presented to the California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board), or its delegate, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. This Stipulated Order resolves the violations alleged herein by the imposition of administrative civil liability against the City in the amount of **$433,366**.

## SECTION II: RECITALS

2. The City is required to comply with the State Water Resources Control Board's (State Water Board) *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Order No. 2006-0003-DWQ* (Statewide General Order) because the City owns and operates a sanitary sewer collection system greater than one mile in length. The City has been enrolled in the Statewide General Order since 2006. The City is required to convey its untreated domestic and municipal wastewater to the South County Regional Wastewater Authority wastewater treatment plant for treatment before authorized discharge to ground and surface waters.

3. Prohibition C.1. of the Statewide General Order provides "[a]ny SSO [sanitary sewer overflow] that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited."

4. On four separate occasions, the City discharged untreated domestic and municipal wastewater from its collection system to Llagas Creek (below Chesbro Reservoir) as summarized below and shown in Table 1 of Attachment A *Factor Consideration and Penalty Calculation Methodology for Administrative Civil Liability Complaint No. R3-2019-0039* (Attachment A). Attachment A is attached to this Stipulated Order and incorporated herein by reference.

a. SSO #1: Unauthorized discharge from the City's sanitary sewer system near 14240 Monterey Road to waters of the United States on December 10, 2015, for a period of one day totaling 12,000 gallons.

b. SSO #2: Unauthorized discharge from the City's sanitary sewer system near Monterey Road and Ciolino Avenue to waters of the United States on January 8, 2017, for a period of one day totaling 57,900 gallons.

c. SSO #3: Unauthorized discharge from the City's sanitary sewer system near 12690 Harding Avenue to waters of the United States on January 8, 2017, for a period of one day totaling 204,000 gallons.

d. SSO #4: Unauthorized discharge from the City's sanitary sewer system near 12690 Harding Avenue to waters of the United States on February 20, 2017, for a period of one day totaling 78,000 gallons. The City was able to prevent 22,266 gallons from entering surface waters.

5. The Prosecution Team alleges that the City violated Prohibition C.1. of the Statewide General Order and section 301 of the Clean Water Act in each of these instances by discharging a combined total of approximately 330,000 gallons of untreated domestic and municipal wastewater to Llagas Creek, a water of the United States without a National Pollutant Discharge Elimination System (NPDES) permit.

6. Water Code section 13385, subdivision (a) states that a discharger who violated section 301 of the Clean Water Act is subject to administrative civil liability pursuant to Water Code section 13385, subdivision (c), in an amount not to exceed the sum of $10,000 per day of violation and $10 per gallon of waste discharged over 1,000 but not cleaned up.

7. To resolve the alleged violations as shown in Table 1 of Attachment A by consent and without further administrative proceedings, the Parties have agreed to the imposition of an administrative civil liability of **$433,366** against the Settling Respondent. The administrative civil liability amount is the liability amount the Prosecution Team calculated using Steps 1 through 10 of the State Water Board's Water Quality Enforcement Policy (May 2010) (Enforcement Policy) as shown in Attachment A.

8. The Parties have agreed to settle the matter without administrative or civil litigation and to present this Stipulated Order to the Central Coast Water Board, or its delegate, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

9. The Prosecution Team has determined that the resolution of the violations is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the violations except as provided in this Stipulated Order, and that this Stipulated Order is in the public's best interest.

## SECTION III: STIPULATIONS

The Parties incorporate the foregoing Section II, *Recitals*, and stipulate to the following:

10. **Jurisdiction:** The Parties agree that the Central Coast Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulated Order.

11. **Administrative Civil Liability:** The Settling Respondent hereby agrees to pay the administrative civil liability totaling **$433,366** to resolve the violations as set forth in Section II and Attachment A.

12. **Payment:** The Settling Respondent shall submit a check for **$225,689** in administrative civil liability no later than 30 days following the date the Central Coast Water Board or its delegate signs this Stipulated Order. The check shall be made payable to "*State Water Pollution Cleanup and Abatement Account*," reference the Order number on page one of this Stipulated Order, and be submitted to:

State Water Board Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

The Settling Respondent shall provide a copy of the check via e-mail to the State Water Board, Office of Enforcement (Catherine.Hawe@waterboards.ca.gov) and the Central Coast Water Board (Thea.Tryon@waterboards.ca.gov).

13. **Enhanced Compliance Actions (ECAs) and Suspended Liability:** Enforcement Policy section IX. provides,

> ECAs are projects that enable a discharger to make capital or operational improvements beyond those required by law, and are separate from projects designed to merely bring a discharger into compliance. The Water Boards may approve a

settlement with a discharger that includes suspension of a portion of the monetary liability of a discretionary ACL for completion of an ECA. Except as specifically provided [in the Enforcement Policy], any such settlement is subject to the rules that apply to Supplemental Environmental Projects [established in the *State Water Board Policy on Supplemental Environmental Projects*, effective May 3, 2018 (SEP Policy)].

Furthermore, the SEP Policy limits ECAs to 50 percent of the total administrative civil liability excluding the Prosecution Team investigative and enforcement costs. The Prosecution Team has determined that the City's two ECAs comply with the Enforcement and SEP Policies.

Subtracting the Prosecution Team's documented investigative and enforcement costs of $18,012 from the total administrative civil liability of $433,366 leaves $415,354. Half of that amount is $207,677 and is eligible for suspension and use in one or more ECAs. Therefore, **$207,677** of the total administrative civil liability is suspended and shall be satisfied through the implementation of two ECAs as described in Attachment B, incorporated herein by reference, and summarized below. The City proposes to implement the following ECAs[1]:

a. **ECA 1 – Morgan Hill Sanitary Sewer System Asset Management Plan Development and Implementation Project:** The City shall develop and implement an asset management plan capable of improving SSO prevention and response. This includes creating an asset inventory by conducting a review of sewer utility records, drawings, and design reports to determine asset type, size, material, elevations, and age; review of pipe inspection records; field surveys where sewer utility records are not available; and incorporating the asset inventory data into the City's GIS database. Furthermore, using the asset inventory and the City's Sewer System Master Plan, the Settling Respondent will determine asset criticality score, estimate the risk of failure and remaining asset life, prepare a risk-based repair and replacement schedule, and incorporate these operational and management changes into its Sewer System Master Plan for continuation through time. The City's estimated budget for ECA 1 is $190,000. The suspended liability amount associated with the successful completion of ECA 1 is $189,677 (ECA 1 Amount).

b. **ECA 2 – Morgan Hill Sanitary Sewer System Flow Monitoring Project:** The City shall purchase and install three new manhole covers capable of obtaining real time flow and level information with alarms so

[1] Compliance Determination Forms documenting the Prosecution Team's review of the ECAs for compliance with the Enforcement Policy and the SEP Policy are available upon request.

operators can respond before SSOs occur. The three new manhole covers will be installed in the following locations: Old Monterey and Sanchez Road; Main Street and Grand Prix Road; and Joint Trunk MH JT-75 at Day Road. These locations are either known trouble spots or are located near surface water bodies. The City will revise its Sewer System Master Plan to include a section for the operation, maintenance, and scheduled replacement of the new manhole covers. The City's estimated budget for ECA 2 is $18,000. The suspended liability amount associated with the successful completion of ECA 2 is $18,000 (ECA 2 Amount).

14. **ECA Completion Deadlines:** The City shall comply with the following agreed upon ECA completion deadlines. Additionally, the City shall submit a Final Report upon the completion of each ECA declaring such completion and detailing fund expenditures and goals achieved. The corresponding Final Report submission deadlines are outlined below for each respective ECA.

a. **ECA 1 – Morgan Hill Sanitary Sewer System Asset Management Plan Development and Implementation Project:** The Parties agree that the timeline for completion of the tasks in ECA 1 is as shown in Attachment B, *ECA 1 Project Schedule*, with project closure due no later than July 15, 2020. A complete Final Report shall be submitted to the Central Coast Water Board no later than August 14, 2020. Submittal of the complete Final Report shall be the last submittal for the ECA 1 component of this Stipulated Order. The liabilities associated with the successful completion of ECA 1 shall be permanently suspended upon the Central Coast Water Board's receipt of the *Final Report for the Morgan Hill Sanitary Sewer System Asset Management Plan Development and Implementation Project*, and Central Coast Water Board staff issuance of the Satisfaction of Order letter described in Paragraph 17.

b. **ECA 2 – Morgan Hill Sanitary Sewer System Flow Monitoring Project:** The Parties agree that the timeline for completion of the tasks in ECA 2 is as shown in Attachment B, *ECA 2 Project Schedule*, with project closure due no later than September 1, 2019. A complete Final Report shall be submitted to the Central Coast Water Board no later than October 1, 2019. Submittal of the complete Final Report shall be the last submittal for the ECA 2 component of this Stipulated Order. The liabilities associated with the successful completion of ECA 2 shall be permanently suspended upon the Central Coast Water Board's receipt of the *Final Report for the Morgan Hill Sanitary Sewer System Flow Monitoring Project*, and Central Coast Water Board staff issuance of the Satisfaction of Order letter described in Paragraph 17.

15. **Request for Extension of Final ECA Completion Deadlines:** If the City cannot meet the ECA Completion Deadlines due to circumstances beyond the City's anticipation or control, the City shall notify the Executive Officer in writing within thirty (30) days of the date the City first knew of the event or circumstance that caused or could have caused a violation of this Stipulated Order. The notice shall describe the reason for the nonperformance and specifically refer to this Paragraph. The notice shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by the City to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance with this Stipulated Order. The City shall adopt all reasonable measures to avoid and minimize such delays.

The determination as to whether the circumstances were beyond the reasonable control of the City and its agents will be made by the Executive Officer. Where the Executive Officer concurs that compliance was or is impossible, despite the timely good faith efforts of the City, due to circumstances beyond the control of the City that could not have been reasonably foreseen and prevented by the exercise of reasonable diligence by the City, a new compliance deadline shall be established and provided to the City in writing with the effect of revising this Stipulated Order. The Executive Officer will endeavor to grant a reasonable extension of time, if warranted.

16. **Final Reports and Quarterly Monitoring Reports:** The Paragraph 14 *ECA Completion Deadlines* as described above and as detailed in Attachment B anticipate that the *Morgan Hill Sanitary Sewer System Asset Management Plan Development and Implementation Project* (ECA 1) shall be completed on August 14, 2020 upon submission of a complete ECA 1 Final Report, and that the *Morgan Hill Sanitary Sewer System Flow Monitoring Project* (ECA 2) shall be completed on October 1, 2019 upon submission of a complete ECA 2 Final Report to the Central Coast Water Board. The City shall provide quarterly monitoring reports on the progress of all ECAs on the 15th day of the month following the end of each calendar quarter beginning on July 15, 2019.

17. **Audits and Certification of Enhanced Compliance Actions**

a. **Certification of Completion:** Within 30 days of completion of each ECA, the City shall submit a certified statement of completion of the ECA ("Certification of Completion"). The Certification of Completion may be submitted with the City's Final Report for each respective project. The City's authorized representative shall submit the Certification of Completion under penalty of perjury to the designated Central Coast Water Board contact[2]. The Certification of Completion shall include the following:

i. **Certification of Expenditures**

[2] The Central Coast Water Board Executive Officer will designate the Central Coast Water Board contact in the transmittal letter for the signed Order, and subsequently notify the City if any changes to that contact are needed.

Certification documenting all expenditures by the City. The expenditures may include external payments to outside vendors or contractors implementing the ECA. If applicable, the expenditures may include the costs of internal environmental management resources and internal business unit resources, provided that such expenditures are directly related to development and implementation of the ECA. In making such certification, the official may rely upon normal company and project tracking systems that captures employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The City shall provide any additional information requested by Central Coast Water Board staff that is reasonably necessary to verify ECA expenditures. The certification need not address any costs incurred by the Central Coast Water Board for oversight.

ii. **Certification of Performance of Work**

Certification that the ECA has been completed in accordance with the terms of this Stipulated Order. Such documentation may include photographs, invoices, receipts, certifications, and other material reasonably necessary for the Central Coast Water Board to evaluate the completion of the ECA and the costs incurred by the City.

iii. **Certification that Work Performed on ECA Met or Exceeded Requirements of CEQA and other Environmental Laws [where applicable]**

Certification that the ECA meets or exceeds the requirements of CEQA and/or other environmental laws. Unless the City is exempted from compliance with CEQA, the City shall, before the ECA implementation date,

consult with other interested state agencies regarding potential impacts of the ECA. To ensure compliance with CEQA where necessary, the City shall provide the Central Coast Water Board with the following documents:

A. Categorical or statutory exemptions;
B. Negative Declaration if there are no "significant" impacts;
C. Mitigated Negative Declaration if there are potential "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potential significant impacts;
D. Environmental Impact Report if there are "significant" impacts.

iv. **Third Party Audit**

If the designated Central Coast Water Board contact obtains information that causes the representative to reasonably believe that the City has not expended money in the amounts claimed, or has not adequately completed any of the work in the ECA, the designated Central Coast Water Board contact may require, and the City shall submit, at its sole cost, a report prepared by an independent third party(ies), stating that in its professional opinion, the City has or has not expended money in the amounts claimed. In the event of such an audit, the City agrees that they will provide the third-party auditor with access to all documents which the auditor requests. Such information shall be provided to the designated Central Coast Water Board contact within three months of the completion of the City's ECA obligations. The audit need not address any costs incurred by the Central Coast Water Board for oversight.

b. **Central Coast Water Board Acceptance of Completed ECAs:** Upon the City's satisfaction of its obligations under this Stipulated Order, the completion of each ECA and any audits, the designated Central Coast Water Board contact, with notice to the Central Coast Water Board enforcement coordinator, shall request that the Central Coast Water Board, or the Central Coast Water Board's delegee, issue a "Satisfaction of Order." The issuance of the Satisfaction of Order shall terminate any further obligation of the City under this Stipulated Order and permanently suspend the administrative civil liability associated with the ECAs.

c. **Failure to Expend All Suspended Administrative Civil Liability Funds on the Approved ECAs:** In the event that the City is not able to demonstrate to the reasonable satisfaction of the designated Central Coast Water Board contact that the entire ECA amounts pursuant to

Paragraph 13 have been spent for the completed ECAs, the City shall pay as an administrative civil liability the difference between the ECA amounts and the amounts the City can demonstrate were actually spent on the ECAs.

d. **Failure to Complete the ECAs:** If the ECAs are not fully implemented by the Paragraph 14 *ECA Completion Deadlines* required by this Stipulated Order and an extension has not been granted by the Central Coast Water Board's Executive Officer pursuant to Paragraph 15 above, the designated Central Coast Water Board contact shall issue a Notice of Violation. As a consequence, the City shall be liable to pay the entire Suspended Liability to the State Water Pollution Cleanup and Abatement Account.

e. **Central Coast Water Board Not Liable:** Neither the Central Coast Water Board members nor the Central Coast Water Board staff, attorneys, or representatives shall be liable for any injury or damage to person or property resulting from acts or omissions by the City, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Central Coast Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the City, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

The City and its contractor(s) covenant not to sue or pursue any administrative or civil claim or claims against any state agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order or the ECAs. This provision does not preclude the City and/or the Implementing Party from opposing a Notice of Violation or motion brought under Paragraph 17.d.

18. **Publicity:** Whenever the City or its agents or subcontractors publicize one or more elements of the ECAs, they shall state in a **prominent manner** that the project is being undertaken as part of the settlement of an enforcement action by the Central Coast Water Board against the City.

19. **Site Inspections**: The City shall permit Central Coast Water Board's staff to inspect during normal business hours any location where the ECAs are being implemented as well as review any documents associated with implementation of the ECA(s) at any time without notice.

20. **Compliance with Applicable Laws:** Settling Respondent understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability.

21. **Party Contacts for Communications related to this Stipulated Order:**

**For the Central Coast Water Board:**
Thea Tryon
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
Thea.Tryon@waterboards.ca.gov
(805) 542-4776

**For Settling Respondent:**
Chris Ghione
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Chris.Ghione@morganhill.ca.gov
(408) 782-9154

22. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

23. **Matters Addressed by this Stipulated Order:** Upon the Central Coast Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the violation(s) as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Paragraph 12 and completion of the ECAs as described in Paragraph 13.

24. **Public Notice:** The Settling Respondent understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Central Coast Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Coast Water Board, or its delegate, for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Central Coast Water Board or its delegate. The

Settling Respondent agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

25. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Coast Water Board's or its delegate's adoption of the Stipulated Order, and public review of this Stipulated Order is lawful and adequate. The Parties understand that the Central Coast Water Board, or its delegate, have the authority to require a public hearing on this Stipulated Order. In the event procedural objections are raised or the Central Coast Water Board requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances.

26. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.

27. **Modification:** The Parties shall not modify this Stipulated Order by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Central Coast Water Board or its delegate.

28. **If the Order Does Not Take Effect:** In the event that the Stipulated Order does not take effect because the Central Coast Water Board or its delegate does not approve it, or the State Water Board or a court vacates it in whole or in part, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Coast Water Board to determine whether to assess administrative civil liabilities for the underlying violation(s), unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to the following:

a. Objections related to prejudice or bias of any of the Central Coast Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Coast Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violation alleged herein in this matter; or

b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

29. **Waiver of Hearing:** Settling Respondent has been informed of the rights Water Code section 13323, subdivision (b) provides, and hereby waives its right to a hearing before the Central Coast Water Board prior to the Stipulated Order's adoption.

30. **Waiver of Right to Petition or Appeal:** Settling Respondent hereby waives its right to petition the Central Coast Water Board's adoption of the Stipulated Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

31. **Mutual Release and Discharge of Claims:** In consideration for the promises, conditions, and covenants contained herein, each of the parties, for itself on behalf of its heirs, executors, administrators, successors and assigns, hereby irrevocably and unconditionally releases and discharges the other party and its respective agents, officers, directors, shareholders, employees, attorneys, subsidiaries, predecessors, successors and assigns, from any and all claims, liabilities, obligations, promises, causes of actions, actions, suits, costs, expenses, fees (including but not limited to attorneys' fees), damages or demands, of whatsoever kind or character, whether civil, criminal, or administrative, arising from or relating to the violations alleged herein. Each of the parties understands, acknowledges and agrees that this Stipulated Order may be pleaded and introduced as evidence as a full and complete defense to any claim, demand, action, or cause of action brought by any party against the other party related to the subject matter of this Stipulated Order.

32. **Necessity for Written Approvals:** All approvals and decisions of the Central Coast Water Board under the terms of this Stipulated Order shall be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions, or comments from Central Coast Water Board employees or officials regarding submissions or notices shall be construed to relieve the Settling Respondent of its obligation to obtain any final written approval this Stipulated Order requires.

33. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Stipulated Order.

34. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.

35. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.

36. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

37. **Effective Date**: This Stipulated Order shall be effective and binding on the Parties upon the date the Central Coast Water Board, or its delegate, enters the Order incorporating the terms of this Stipulated Order.

**IT IS SO STIPULATED.**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**
**CENTRAL COAST REGION, PROSECUTION TEAM**

Date: _____

By: Matthew T. Keeling Digitally signed by Matthew T. Keeling Date: 2019.10.21 12:25:19 -07'00'

Matthew T. Keeling
Assistant Executive Officer

**IT IS SO STIPULATED.**

**CITY OF MORGAN HILL**

Date: 10/9/19

By: _____
Christina Turner
City Manager, City of Morgan Hill

APPROVED AS TO FORM
Donald A. Larkin, City Attorney

**ORDER OF THE CENTRAL COAST WATER BOARD**

1. This Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.

2. The timeline for completion of the terms of this Settlement Agreement and Stipulation for Entry of Order:

| Task I.D. | Task Description | Deadline |
|---|---|---|
| a. | Payment of **$225,689** to the State Water Pollution Cleanup and Abatement Account | No later than 30 days after this Stipulated Order is adopted. |
| b. | First Quarterly Monitoring Report on ECA progress due | The 15th calendar day after the calendar quarter in which this Stipulated Order is adopted. |
| c. | Successive Quarterly Monitoring Reports on ECA progress due | April 15th<br>July 15th<br>October 15th<br>January 15th<br>until submittal of the ECA Final Reports and as needed due to any approved project extensions. |
| d. | Completion of the *Morgan Hill Sanitary Sewer System Flow Monitoring Project* ECA 2 | 80 calendar days after this Stipulated Order is adopted. |
| e. | Submission of a complete *Final Report on Morgan Hill Sanitary Sewer System Flow Monitoring Project* ECA 2 | 110 calendar days after this Stipulated Order is adopted. |
| f. | Completion of the *Morgan Hill Sanitary Sewer System Asset Management Plan Development and Implementation Project* ECA 1 | 515 calendar days after this Stipulated Order is adopted. |
| g. | Submission of a complete *Final Report for Morgan Hill Sanitary Sewer System Asset Management Plan Development and Implementation Project* ECA 1 | 545 calendar days after this Stipulated Order is adopted. |

3. In accepting this Stipulated Order, the Central Coast Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, and has applied the Penalty Calculation Methodology set forth in the State Water Board's Enforcement Policy, which is incorporated herein by this reference. The Central Coast Water Board's consideration of these factors and

application of the Penalty Calculation Methodology is based upon information obtained by the Prosecution Team in investigating the allegations set forth in the Stipulated Order, or otherwise provided to the Central Coast Water Board.

4. This is an action to enforce the laws and regulations administered by the Central Coast Water Board. The Central Coast Water Board finds that issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, section 21000 et seq.) in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.

5. The Executive Officer of the Central Coast Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the City fails to perform any of its obligations under the Stipulated Order.

**IT IS HEREBY ORDERED** pursuant to Water Code section 13323 and Government Code section 11415.60, on behalf of the Central Coast Water Board, do certify the foregoing is a full, true, and correct copy of an order adopted by the Central Coast Water Board on March 6, 2020.

_____ _____

John M. Robertson Date
Executive Officer
California Regional Water Quality Control Board
Central Coast Region

**Attachment A:** Factor Consideration and Penalty Calculation Methodology for Administrative Civil Liability

**Attachment B:** City of Morgan Hill Enhanced Compliance Actions

**ATTACHMENT A**
**FACTOR CONSIDERATION AND PENALTY CALCULATION METHODOLOGY FOR ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R3-2019-0039**
**CITY OF MORGAN HILL**
**SANITARY SEWER SYSTEM**
**SANTA CLARA COUNTY**

This document provides details to support recommendations for enforcement in response to City of Morgan Hill (Discharger or City) sanitary sewer overflows (SSO). The Central Coast Regional Water Quality Control Board (Central Coast Water Board) Prosecution Team derived the proposed administrative civil liability following the State Water Resources Control Board's (State Water Board) Water Quality Enforcement Policy (the "Enforcement Policy").[1] The proposed civil liability takes into account such factors as the Discharger's culpability, cooperation in returning to compliance, ability to pay the proposed liability, and other factors as justice may require.

**Application of Water Board's Enforcement Policy**

On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Enforcement Policy. The Office of Administrative Law approved the Enforcement Policy and it became effective on May 20, 2010[2]. The Enforcement Policy establishes a methodology for assessing administrative civil liability for violations of the California Water Code (Water Code) and Federal Water Pollution Control Act (Clean Water Act). Use of the methodology incorporates Water Code sections 13327 and 13385 that require the Central Coast Water Board to consider specific factors when determining the amount of civil liability to impose, including "…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 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 calculation methodology is applied throughout the procedural steps discussed in detail below.

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[1] See the State Water Board's 2009 Enforcement Policy and Penalty Calculation Methodology Worksheet

[2] On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020 amending the 2009 Enforcement Policy. The Office of Administrative Law approved the 2017 Enforcement Policy effective October 5, 2017. The 2010 Enforcement Policy was effective at the time of the violations alleged herein and is applied throughout, except for the use of 2017 Enforcement Policy clarifications of elements common between both versions of the policy. See the State Water Board Office of Enforcement memo dated September 12, 2017 entitled, "Application of 2010 and 2017 Enforcement Policies".

**Regulatory Basis for Alleged Violation(s) and Proposed Liability**

The Discharger is required to comply with the State Water Board's *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Order No. 2006-0003-DWQ* (Statewide General Order) because it is a municipality that owns or operates a sanitary sewer collection system greater than one mile in length. The Discharger has been enrolled in the Statewide General Order since 2006. Prohibition C.1. of the Statewide General Order provides "[a]ny SSO [sanitary sewer overflow] that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited."

The Discharger is required to convey its untreated domestic and municipal wastewater to the South County Regional Wastewater Authority (SCRWA) Wastewater Treatment Plant (WWTP) for treatment before authorized discharge to ground and surface waters. On four separate occasions, the City discharged untreated domestic and municipal wastewater from its collection system to Llagas Creek (below Chesbro Reservoir). The Prosecution Team alleges that the Discharger violated Prohibition C.1 of the Statewide General Order and section 301 of the Clean Water Act by discharging a combined total of approximately 330,000 gallons of untreated domestic and municipal wastewater to Llagas Creek, a water of the United States, without a National Pollutant Discharge Elimination System (NPDES) permit on December 10, 2015, January 8, 2017 (two SSOs occurred on this day), and February 20, 2017. The discharges occurred during rain events.

Pursuant to Water Code section 13385, subdivision (a), a discharger who violates section 301 of the Clean Water Act is subject to administrative civil liability pursuant to Water Code section 13385, subdivision (c), in an amount not to exceed the sum of $10,000 per day of violation and $10 per gallon of waste discharged over 1,000 gallons but not cleaned up.

**Table 1: Summary of SSOs**

| SSO # | Violation Description | Violation Occurrence Dates | Days of Violation | Total Volume Discharged to Waters of the U.S. |
|---|---|---|---|---|
| 1 | Unauthorized discharge from the sanitary sewer system near 14240 Monterey Road to waters of the U.S. resulting from Discharger blocking part of sewer system and potentially inflow and infiltration (I&I) | December 10, 2015 | 1 day | 12,000 gallons |
| 2 | Unauthorized discharge from the sanitary sewer system near Monterey Road and Ciolino Avenue to waters of the U.S. resulting from I&I | January 8, 2017 | 1 day | 57,900 gallons |
| 3 | Unauthorized discharge from the sanitary sewer system near 12690 Harding Avenue to waters of the U.S. resulting from I&I | January 8, 2017 | 1 day | 204,000 gallons |
| 4 | Unauthorized discharge from the sanitary sewer system near 12690 Harding Avenue to waters of the U.S. resulting from I&I | February 20, 2017 | 1 day | 55,734 gallons[3] |

**Penalty Calculation Methodology Procedural Steps**

Though each of the four SSO events constitute separate violations of the Statewide General Order and the Clean Water Act, for purposes of determining administrative civil liability, the total volume discharged during the two SSO events on January 8, 2017 will

[3] The Discharger estimated a total spill volume of 78,000 gallons, but prevented 22,266 gallons from discharging to surface waters.

be combined and analyzed together, and January 8, 2017 will be considered a single day of violation.

**Step 1. Harm or Potential Harm to Beneficial Uses (for Discharge Violations)[4]**
This initial step for discharge violations is used to determine the actual harm or potential harm to the water body's beneficial uses caused by the violation using a three-factor scoring system to quantify: (1) the actual harm or potential harm to beneficial uses; (2) the physical, chemical, biological, or thermal characteristics of the discharge (i.e., the degree of toxicity of the discharge); and (3) the discharge's susceptibility to cleanup or abatement for each violation or group of violations. Because actual harm is not always quantifiable due to untimely reporting, inadequate monitoring, and/or other practical limitations, potential harm can be used under this factor.

**Factor 1: Harm or Potential Harm to Beneficial Uses**
Factor 1 Background: The evaluation of the actual harm or the potential harm to beneficial uses factor considers the harm to beneficial uses in the affected receiving water body that may result from exposure to the pollutants or contaminants in the discharge, consistent with the statutory factors of the nature, circumstances, extent, and gravity of the violation(s). The Central Coast Water Board may consider actual harm or potential harm to human health, in addition to harm to beneficial uses. Actual harm as used in this section means harm that is documented and/or observed. Potential harm should be evaluated in the context of the specific characteristics of the waste discharged and the specific beneficial uses of the impacted waters.
The Enforcement Policy specifies a score ranging from 0 to 5 based on a determination of whether direct or indirect harm, or potential for harm, from a violation is negligible (0) to major (5).

Factor 1 Consideration: The harm or potential harm to beneficial uses from the discharges is moderate (3). "Moderate" is assigned when impacts are observed or reasonably expected and impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects.

The Water Quality Control Plan for the Central Coast Basin, 2011 and 2016 Editions (Basin Plan), Chapter 2, *Present and Potential Beneficial Uses*, lists the beneficial uses of Llagas Creek below Chesbro Reservoir. Of the listed beneficial uses, those potentially harmed by the discharges considered herein are municipal and domestic supply (MUN), agricultural supply (AGR), groundwater recharge (GWR), water contact recreation (REC-1), non-contact water recreation (REC-2), wildlife habitat (WILD), cold

[4] 2017 Enforcement Policy clarifications are utilized in the consideration of Step 1 Harm or Potential for Harm to Beneficial Uses discussed herein.

fresh water habitat (COLD), warm fresh water habitat (WARM), migration of aquatic organisms (MIGR), spawning, reproduction, and/or early development (SPWN), rare, threatened, or endangered species (RARE), and commercial and sport fishing (COMM).

The Basin Plan establishes numeric and narrative water quality objectives for the protection of beneficial uses of surface and groundwaters. Exceeding those objectives is an indicator of harm or potential harm to beneficial uses. The Amended Monitoring and Reporting Program for the Statewide General Order, Order No. WQ 2013-0058-EXEC, Section D, requires water quality sampling within 48 hours of all SSOs of 50,000 gallons or more discharging to surface waters, and therefore applied to both SSOs #2 and #3 on January 8, 2017, and SSO #4 on February 20, 2017. The Discharger did not collect samples to characterize the discharges, compare analytical results to applicable water quality objectives, and assess actual harm[5], so this discussion predominantly considers potential harm to beneficial uses.

Settleable solids, organic materials, ammonia, and excessive nutrients are potentially harmful to habitat-related beneficial uses such as WILD, COLD, WARM, MIGR, SPWN, and RARE due to material deposition in creek beds, oxygen depletion, and toxicity. Pathogenic organisms harmful to human health are potentially harmful to MUN, GWR, REC-1, REC-2, and COMM due to direct contact with or ingestion of impacted waters, or indirect contact via foodborne pathways such as fish consumption. Oil, grease, or floatable or suspended materials potentially harm REC-2 due to aesthetic impacts. The degree of toxicity factor below also discusses common characteristics of untreated municipal or domestic[6] wastewater. Moderate to above-moderate potential harm to these beneficial uses are therefore reasonably expected. Appendix A (attached hereto) further relates these general characteristics to the beneficial uses of Llagas Creek specified in the Basin Plan.

Basin Plan, Chapter 3, *Water Quality Objectives*, lists objectives applying to all inland surface waters (Section II.A.2), and to waterbodies with specific beneficial uses (Section II.A.2, and Tables 3-1 through 3-5). Appendix A identifies the water quality objectives applicable to Llagas Creek for characteristics commonly associated with untreated municipal wastewater including industrial wastewater sources, the beneficial uses associated with those objectives, and the nature of the potential harm to those beneficial uses.

The Clean Water Act section 303(d) List identifies waters within the Central Coast Water Board's jurisdiction not meeting water quality objectives and standards (impaired

[5] The Prosecution Team is not at this time recommending formal enforcement for these monitoring violations.
[6] The wastewater qualifying terms "municipal" and "domestic" apply to the Discharger's untreated wastewater and are used interchangeably throughout these considerations.

waters) for specific water quality parameters (i.e., pollutants). Llagas Creek below Chesbro Reservoir is listed as impaired for multiple parameters related to untreated municipal wastewater, including Escherichia coli (E. coli) and fecal coliform (both indicators of pathogenic organisms), low dissolved oxygen (such as from the breakdown and conversion of organic materials and ammonia), nutrients (such as nitrogen and phosphorus), and sedimentation and turbidity (such as from settleable or suspended materials). The beneficial uses associated with these parameters and objectives are therefore not being protected due to these impairments. The Central Coast Water Board adopted and U.S. EPA approved Total Maximum Daily Loads (TMDLs) to address several of these impairments in Llagas Creek, including fecal coliform and nutrients. Llagas Creek beneficial uses associated with the impairments include WARM, COLD, RARE, MIGR, SPWN, MUN, GWR, REC-1, REC-2, and AGR. The Discharger's contribution of wastewater that adversely affects these impairment parameters and therefore potentially harms the creek's beneficial uses further supports a determination of moderate to above-moderate potential harm to beneficial uses.

Relating to the rare, threatened, or endangered species (RARE) beneficial use, the California Department of Fish and Wildlife provided information from the California Natural Diversity Database indicating there are five plant or animal species listed with a state and/or federal status of threatened or endangered for Llagas Creek below the Chesbro Reservoir: California Tiger Salamander, California Red-Legged Frog, Least Bell's Vireo (a songbird), Bay Checkerspot Butterfly, and the Santa Clara Valley Dudleya (a succulent plant).

Potential for harm analysis also considers the circumstances of the violations. SSOs #2 and #3 on January 8, 2017 and SSO #4 on February 20, 2017 occurred during substantial rain events (daily rainfall totals of 2.4 and 3.3 inches, respectively) causing high sheet flows over ground and high flows in surface waters. SSO #1 occurred on December 10, 2015. This SSO occurred during a smaller rain event (daily rainfall totals of 0.16 inches on December 10, 2015, and 0.70 inches on December 11, 2015). With regard to industrial users as referenced in Appendix A, sampling occurs at each facility's discharge point to the sanitary sewer system. Therefore, the non-conventional pollutant (i.e., other than those conventionally present in domestic wastewater) concentrations from each industrial user are diluted in the sewer as it mixes with domestic wastewater that typically lack those pollutants, and further dilution occurs due to mixing with stormwater between the SSO location and discharge to surface waters. Such conditions typically act to dilute SSOs and reduce pollutant concentrations and the potentially adverse effects of some pollutants, although pathogenic organisms benefit less due to the large magnitude of their numbers in untreated domestic wastewater. Furthermore, the City of Gilroy Chemical Control Program provided information

indicating that, due to the days of the week and hours of the day the facilities typically operate, it was likely that only two of the five industrial facilities considered in Appendix A (and below in Factor 2) potentially contributed to SSO #1, #3, and #4. Consideration of these SSO circumstances warrants weighing the determination towards moderate potential harm, and the attenuation of that potential harm without appreciable acute or chronic effects.

These overall factor considerations warrant a reasonable expectation of moderate impacts to beneficial uses likely to attenuate without appreciable acute or chronic effects, and therefore a factor score of **(3) Moderate**.

**Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge (Degree of Toxicity)**

Factor 2 Background: The evaluation of the degree of toxicity considers the physical, chemical, biological, and/or thermal characteristics (i.e., the degree of toxicity) of the discharge, waste, fill, or material involved in the violation or violations, and the risk of damage the discharge could cause to the receptors or beneficial uses. Evaluation of the discharged material's toxicity should account for all the characteristics of the material *prior to discharge*, including, but not limited to, whether it is partially treated, diluted, concentrated, and/or a mixture of different constituents. Toxicity analysis should include assessment of both lethal and sublethal effects such as effects on growth and reproduction. Note that Factor 1 (above) focuses on impacts or the threat of impacts to beneficial uses in specific receiving waters; whereas Factor 2 focuses on the nature and characteristics, or toxicity of the material discharged in the context of potential impacts to beneficial uses more generally.

The Enforcement Policy specifies assigning a score ranging from 0 to 4 based on whether the risk or threat of the discharged material to potential receptors (i.e., human, environmental, ecosystem health exposure pathways) is negligible (0) to significant (4).

Factor 2 Consideration: Based on the physical, chemical, biological, or thermal characteristics of untreated municipal wastewater before SSO discharge, the risk or threat the discharged material poses to potential receptors and beneficial uses is above moderate (3). "Above Moderate" is assigned when the physical, biological, and/or chemical characteristics of the discharged material exceed known risk factors and/or there is substantial concern regarding receptor protection.

The physical characteristics of untreated municipal wastewater include solids that may settle or stay in suspension causing deposition on the creek floor affecting aquatic habitats or aesthetic uses throughout the water column. Oil or grease may also be

present and float at the receiving water surface causing aesthetic impacts. Biologically, this wastewater also contains high levels of pathogenic organisms harmful to human health through direct contact or ingestion, or via foodborne pathways such as fish consumption. Organic material and ammonia can also deplete dissolved oxygen in receiving waters adversely affecting aquatic organisms and wildlife. Excess nutrients in the forms of nitrogen or phosphorus can cause nutrient over-enrichment affecting plant life. Chemically, ammonia can cause toxicity in aquatic life, as can toxic pollutants from industrial wastewater sources commonly present in municipal wastewater. While many industrial pollutants are not directly removed by treatment methods commonly employed at WWTPs, overflows such as those considered here eliminate the possibility of any indirect or coincidental removal during treatment (e.g., removal with solids/organic materials, volatilization during agitation).

The Discharger is a member agency of SCRWA, a joint powers authority established to manage the treatment of wastewater for the Cities of Gilroy and Morgan Hill via operation of the SCRWA WWTP. The Discharger primarily controls potentially toxic pollutants in its WWTP influent through its Pretreatment Program, which the City of Gilroy Chemical Control Program (CCP) implements pursuant to WDR Order No. R3-2017-0028, Provision VI.C.5.b, *Pretreatment*, and reports on annually. While not a definitive characterization of the untreated wastewater discharged in SSO #1, #2, #3, or #4, the Discharger's 2017 Annual Pretreatment Program Report, dated January 25, 2018, confirms the potential for the Discharger's untreated municipal wastewater to include potentially toxic pollutants such as metals (arsenic, barium, beryllium, chromium, cobalt, copper, nickel, silver, and zinc), volatile organic compounds (e.g., acetone, xylenes), and semi-volatile organic compounds (bis(2-ethylhexyl)phthalate). The Discharger reported one significant and four categorical industrial users[7] in Morgan Hill that are permitted to discharge industrial wastewater to the Discharger's sanitary sewer system. CCP provided information indicating that, due to the days of the week and hours of the day the facilities typically operate, it was likely that two of the five facilities potentially contributed to SSO #1, #3, and #4.

Given these facts, the Discharger's untreated municipal wastewater poses an above-moderate risk or a direct threat to potential human or aquatic receptors because the physical, biological, and/or chemical characteristics of the waste material exceed known risk factors and/or there is substantial concern regarding receptor protection. These considerations therefore warrant a factor of **3 (above moderate)**.

[7] "Significant Industrial Users", or SIU, and "Categorical Industrial Users", or CIU, are designations specified in Title 40, Code of Federal Regulations, section 403 for industrial pollutant sources meeting specific waste discharge criteria or that are part of various industrial subcategories that require permits to discharge to WWTPs that in turn discharge to waters of the U.S. While the City of Morgan Hill has five such industrial users, SCRWA permits a total of 427 industrial users in general between the cities of Morgan Hill and Gilroy.

**Factor 3: Susceptibility to Cleanup or Abatement**

Factor 3 Background: The Enforcement Policy specifies assigning a score of 0 or 1 based on whether a discharge is susceptible to cleanup. If 50 percent or more of the discharge is susceptible to cleanup or abatement, then a factor of (0) applies. If less than 50 percent of the discharge is susceptible to cleanup or abatement, then a factor of (1) applies.

Factor 3 Consideration: For each violation, the Discharger reported that less than 50 percent of each discharge was susceptible to cleanup or abatement, so the applicable factor for each violation is **(1)**.

**Step 1 Final Score – Harm or Potential Harm to Beneficial Uses**

The sum of the above scores is **7**. This value is used in Step 2 as the "Potential for Harm" score.

**Step 2. Assessments for Discharge Violations**

Per Gallon Assessments for Discharge Violations

The Enforcement Policy specifies that where there is a discharge, the Water Boards shall determine an initial liability amount on a per gallon basis using the Potential for Harm score from Step 1 and determining the extent of Deviation from Requirement as either minor, moderate, or major. The Deviation from Requirement reflects the extent the alleged violation deviated from the specific requirement at issue. The Potential for Harm score in Step 1 and the Deviation from Requirement determination in Step 2 are used to determine a Per Gallon Factor from Table 1 of the Enforcement Policy. The per gallon assessment is then determined by multiplying the Per Gallon Factor by the number of gallons subject to penalty and the maximum per gallon penalty amount allowed under the Water Code.

Per Day Assessments for Discharge Violations

The Enforcement Policy also specifies that where there is a discharge, the Water Boards shall determine an initial liability factor per day based on the same parameters discussed above. Table 2 of the Enforcement Policy is used to determine a Per Day Factor for the alleged violation. The per day assessment is then determined by multiplying the Per Day Factor by the maximum per day amount allowed under the Water Code. Where deemed appropriate, such as for a large-scale spill, both per gallon and per day amounts are considered under Water Code section 13385, and are therefore applied here to all SSOs.

As determined in Step 1, the Potential for Harm factor for these violations is 7. The Prosecution Team determined that the Deviation from Requirement is **major**. "Major" is assigned when the requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

Prohibition C.1 of the Statewide General Order prohibits any collection system spill that results in a discharge of untreated or partially treated wastewater to waters of the United States, regardless of rainfall or its effects on the sewer system. Similarly, Clean Water Act section 301 prohibits the discharge of any waste to waters of the United States except as authorized by a NPDES permit. These unpermitted discharges of untreated domestic wastewater to a water of the United States without a NPDES permit on four separate occasions renders each requirement ineffective in its essential function and thus represents a major Deviation from Requirement.

Therefore, the Prosecution Team determined that the Per Gallon Factor from Table 1 and the Per Day Factor from Table 2 of the Enforcement Policy is **0.31**.

Water Code section 13385(c) provides that liability of up to $10 per gallon shall apply to volumes of waste discharged but not cleaned up in excess of 1,000 gallons (i.e., the first 1,000 gallons is not penalized), plus up to $10,000 per day of violation. The volumes and days used to calculate the per gallon and per day penalties are shown below in Table 2.

**Table 2: Summary of Volumes and Days Penalized**

| SSO # | Violation Description | Violation Occurrence Dates | Days of Violation | Total Volume Discharged to Waters of the U.S. | Total Volume Used for Per Gallon Penalty |
|---|---|---|---|---|---|
| 1 | Unauthorized discharge to waters of the U.S. resulting from Discharger blocking part of sewer system and potentially I&I | December 10, 2015 | 1 day | 12,000 gallons | 11,000 gallons |
| 2 | Unauthorized discharge to waters of the U.S resulting from I&I | January 8, 2017 | 1 day | 57,900 gallons | 56,900 gallons |
| 3 | Unauthorized discharge to waters of the U.S resulting from I&I | January 8, 2017 | 1 day | 204,000 gallons | 203,000 gallons |

| | | | | | |
|---|---|---|---|---|---|
| 4 | Unauthorized discharge to waters of the U.S resulting from I&I | February 20, 2017 | 1 day | 55,734 gallons[8] | 54,734 gallons |

**High Volume Discharges**

In accordance with the Enforcement Policy, the Water Boards shall apply the above Per Gallon Factor to the maximum per gallon penalty amount of $10 per gallon. However, since the volume of SSOs from municipalities can be very large, a maximum amount of $2.00 per gallon should be used to calculate the per gallon assessment where appropriate. In this instance, the Prosecution Team determined that an assessment of $2.00 per gallon is appropriate for the combined total volume of the SSOs occurring on January 8, 2017. Similar adjustments were not made for SSOs #1 and #4 as neither violation involved SSO volumes large enough for the purposes of this consideration, and a reduction in the maximum assessment of $10 per gallon would result in an inappropriately small penalty.

This consideration results in the reduction of the per gallon base liability for the 204,000-gallon SSO #3 from $629,300 to $125,860. Similarly, the per gallon base liability for the 57,900-gallon SSO #2 is reduced from $176,390 to $35,278.

Therefore, the initial liability amounts for the SSOs are as follows[9]:

Per Gallon Liability:

December 10, 2015 SSO #1: $10 x (11,000) x 0.31 = $34,100
January 8, 2017 SSOs #2 and #3: $2 x (56,900 + 203,000) x 0.31 = $161,138
February 20, 2017 SSO #4: $10 x (54,734) x 0.31 = $169,675

Per Day Liability:

December 10, 2015 SSO #1: $10,000 x 0.31 x 1 day = $3,100
January 8, 2017 SSOs #2 and #3: $10,000 x 0.31 x 1 day = $3,100
February 20, 2017 SSO #4: $10,000 x 0.31 x 1 day = $3,100

**Step 3. Per Day Assessment for Non-Discharge Violations**

This step does not apply to the violations because they are all discharge violations.

[8] The Discharger estimated a total spill volume of 78,000 gallons, but prevented 22,266 gallons from discharging to surface waters. 78,000 – 22,266 = 55,734

[9] As mentioned previously, the total volume discharged during the two SSO occurrences on January 8, 2017 are being combined and analyzed together. Following similar enforcement discretion exercised in the application of the High Volume Discharge per gallon adjustment to both of the January 8, 2017 SSOs, the Prosecution Team proposes to assess one day of violation for both SSOs as they occurred during the same rain event resulting from the same cause, I&I.

**Step 4. Adjustment Factors**

The Enforcement Policy specifies the consideration of violator conduct using three additional factors for modification of the amount of the initial liability determined in Steps 1 through 3: the violator's culpability, the extent to which the violator voluntarily cooperated in returning to compliance including voluntary cleanup efforts, and the violator's history of violation.

**Culpability**

Factor Background: The **culpability** factor addresses discharger conduct including oversight, disregard, lack of attention or precaution, or omission (i.e., negligence) that may have caused or contributed to the violation. For example, the omission of any reasonable precaution, care, or preventive action related to a violation would increase this factor above a neutral score of 1, as would a failure to care for or give proper attention to anything materially or administratively related to a violation. These characteristics can also include actions or inactions leading up to and potentially influencing or causing the event such as maintenance practices, adherence to manufacturer recommendations, operational error, staffing, training, funding, planning, and design. The culpability characteristics discussed above are examples of considerations useful in determining whether to adjust this factor above a neutral score of 1.

First, any performance standards related to the violation (or, in their absence, prevailing industry practices) must be identified. In doing so, the Prosecution Team considers what a similarly situated reasonable and prudent person would have done or not done under similar circumstances.

Where culpability for a violation belongs to a given party, a factor from 1.1 to 1.5 is used to adjust the liability amount accordingly. A culpability factor from 0.5 to less than 1 would indicate that circumstances outside of a discharger's control had a substantial influence on the event, and act to reduce the liability. Therefore, adjustment should result in a multiplier from 0.5 to 1.5, with a lower multiplier for accidents, and a higher multiplier for intentional or negligent behavior.

Factor Consideration: The culpability factor for SSO #1 on December 10, 2015 is **1.2**. The culpability factor for SSOs #2 and #3 on January 8, 2017, and SSO #4 on February 20, 2017 is **1.1**. Considerations supporting those factors include:

- SSO #1 on December 10, 2015, differs from the remaining SSOs in that the SSO occurred as a direct result of the Discharger's planned bypass of one of two sanitary sewer system pipelines at or near the spill location. According to the

Discharger's *Technical Report Regarding December 10, 2015 Monterey Highway Sanitary Sewer Overflow*, dated December 14, 2016 (12/10/15 SSO Technical Report), several days before the spill the Discharger plugged a 30-inch sanitary sewer system pipeline to isolate it for planned repairs. The plug forced upstream flow to cross over to an adjacent 24-inch pipeline. During its response to the SSO, the Discharger removed the plug and immediately stopped the SSO. This indicates that the flow restriction from the Discharger's installed plug directly caused the SSO.

- The Discharger also contributed to the duration of SSO #1 by failing to effectively notify its spill response personnel that one of the sanitary sewer system pipelines in the area of the SSO was plugged, or of the location of the plug. According to the Discharger's 12/10/15 SSO Technical Report, spill response staff arrived on scene by 12:30 AM on December 11, 2015, but was not informed of the plug or its location until contacting an Operations Supervisor by telephone. Staff subsequently located, deflated, and removed the plug by 1:30 AM. The Discharger identified the need to develop a notification procedure to inform all wastewater crews any time a pipeline plug is used, and to establish a monitoring schedule and contingency plan to help prevent SSOs during such circumstances.
- The Discharger's 12/10/15 SSO Technical Report also indicates that the SSO occurred during minor to moderate rainfall. The Discharger reported it does not have enough rainfall and flow data to correlate the SSO with observed rainfall, and that it is unclear how much, if any, influence I&I had on causing the overflow.
- The SSOs on January 8, 2017 and February 20, 2017 were caused by I&I. As cited in the Discharger's *Technical Report Regarding January 8, 2017 Sewer System Overflows*, dated February 21, 2017, and *Technical Report Regarding February 20, 2017 Sewer System Overflow*, dated March 21, 2017, the Discharger knew of its need to remedy the system's I&I issues since at least 2002, as identified in its Sewer System Master Plan[10] dated January 2002. The Discharger continues to address I&I in its latest Sewer System Master Plan dated October 2017. I&I is a common occurrence in sanitary sewer systems, particularly as systems age. However, it is also commonly anticipated and remedied via monitoring and capital improvement planning as evidenced by the Discharger's planning documents noted above. The Discharger's planning efforts were not sufficient to prevent the spills addressed in these violations. The following shows the Discharger's most current status of its projects to prevent or minimize I&I:
    - Per the Discharger's sewer system upgrade webpage (page updated 4/16/2018)[11]: "*Sewer Trunk Line Project, Extend the City's sewer trunk line*

[10] Both technical reports refer to this plan as the "2002 Wastewater Master Plan."
[11] See the City of Morgan Hill's Sewer System Upgrade Project webpage.

*along Monterey Road, starting at Highland/Harding intersection and ending at Renz Road in Gilroy. Working on 65% design plans.*" and
    - "*Infiltration and Inflow Rehabilitation Project. Replace/repair sewer pipes to reduce storm water infiltration. Council award expected April 18 to Pacific Underground Construction for $691,850. Construction anticipated in May 2018.*"
- The Discharger's 2017 Sewer System Master Plan, Appendix B, *Sewer Flow Monitoring and Inflow/Infiltration Study, May 2014*, page 19, includes the storm event frequency contour map developed by the National Oceanic and Atmospheric Administration (NOAA) for the Morgan Hill area. The map classifies a 10-year, 24-hour storm event in Morgan Hill as 4.23 inches (NOAA Rainfall Atlas, 1973). Based on the Discharger's SSO Technical Reports for the January 8 and February 20, 2017 SSOs, 24-hour rainfall totals for the dates related to the SSOs were as follows:
    - January 7, 2017: 0.40 inches
    - January 8, 2017: 2.39 inches
    - January 9, 2017: 3.40 inches
    - February 21, 2017: 3.32 inches
- None of the rain events that resulted in the sewer system overflows exceeded the 10-year, 24-hour rainfall, which is a commonly used criterion for storm-related project designs. The Prosecution Team recognizes that this may not have been the design criteria used for the sections of the sewer system related to these SSOs. However, the Discharger's efforts to manage and mitigate I&I have not resulted in the sewer system's ability to function properly during less than commonly used "design storm" amounts of rainfall.

**Cleanup and Cooperation**

Factor Background: The **cleanup and cooperation** factor addresses the extent to which the discharger voluntarily cooperated in returning to compliance and correcting environmental damage, including any voluntary cleanup efforts undertaken after a violation. Adjustment of this factor should result in a multiplier between 0.75 to 1.5, using the lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where the response falls below what would be considered a reasonably expected response. A reasonable and prudent response to a discharge violation or timely response to a Water Board order should receive a neutral factor of 1.0 as it is assumed a reasonable amount of cooperation is the warranted baseline.

Factor Consideration: The Discharger provided cleanup information in each of its technical reports for the SSOs. For SSO #1, wastewater from the SSO discharged to a

drainage ditch that was flowing with stormwater. The Discharger did not have the capacity to impound and collect the volume of water flowing in the drainage ditch, and so was unable to recover any of the SSO. The Discharger returned to the area the day after the SSO to recover any residual solid material, but found none. For SSO #2, the I&I in the sewer system eliminated any potential downstream capacity to pump the spill to. In addition, the Discharger did not have the capacity to collect the SSO and transport it the wastewater treatment plant. For SSO #3, the Discharger discovered the SSO after it had stopped, so there was no opportunity to perform cleanup other than cleaning up residual solids the day after the SSO.

For SSO #4, the Discharger knew the SSO location at 12690 Harding Avenue was a known I&I trouble spot in the sanitary sewer system (same location as SSO #3). In anticipation of the rain event during which the SSO occurred, on February 19, 2017, the Discharger established a bypass pumping operation using sandbags to construct a containment area in a roadside ditch adjacent to the trouble spot and eventual spill location, and monitored the location in 12-hour shifts. Once the storm event started and I&I in the sewer system began to increase, the Discharger began the bypass pumping. The wastewater flow eventually exceeded the bypass pump capacity and the SSO started. The Discharger continued pumping and started using two vactor vacuum trucks to transport spilled wastewater to a downstream manhole with available capacity. The pumping and waste transport continued until the spill stopped, and the Discharger was thus able to prevent approximately 22,000 gallons of the SSO from reaching surface waters. Given the circumstances and information available to the Discharger, the Discharger cleaned up and cooperated reasonably as applicable to the violations addressed herein. All violations are therefore assessed a multiplier of **1.0**.

**History of Violations**

Factor Background: Where there is a **history of violations** for which a Water Board has prosecuted violations by taking formal enforcement action, a minimum multiplier of 1.1 should be used. Where a discharger has no prior history of such violations, this factor should be neutral, or 1.0. Where the discharger has prior prosecuted violations within the last five years, the water boards should use a multiplier of 1.1. Where the discharger has a history of similar or numerous dissimilar prosecuted violations, the Water Boards should consider adopting a multiplier above 1.1.

Factor Consideration: The Discharger has no history of violations for which the Central Coast Water Board has taken formal enforcement action, therefore, a score of **1.0** is appropriate.

**Step 5. Determination of Total Base Liability Amount**

The Total Base Liability amount for the violations is calculated by multiplying the initial amount (including any high-volume reductions) by the adjustment factors for each alleged violation (Initial Liability) x (Culpability) x (Cleanup/Cooperation) x (History of Violations). Where multiple violations or violation types are considered, the individually calculated Base Liability amounts are added together to determine the Total Base Liability. The applicable Total Base Liability amount for all SSOs is $415,355. [12]

December 10, 2015 SSO #1: ($34,100 + $3,100) x 1.2 x 1 x 1 = $44,640
January 8, 2017 SSOs #2 and #3: ($161,138 + $3,100) x 1.1 x 1 x 1 = $180,662
February 20, 2017 SSO #4: ($169,675 + $3,100) x 1.1 x 1 x 1 = $190,053

Total Base Liability = $415,355

**Step 6. Ability to Pay and Continue in Business**

The Central Coast Water Board determines a discharger's ability to pay an administrative civil liability by its revenues and assets. The Water Board may adjust the Total Base Liability amount if sufficient financial information is available to assess the Discharger's ability to pay the Total Base Liability amount or the effect of that amount on the Discharger's ability to continue in business.

To assess the Discharger's ability to pay, the Prosecution Team reviewed the *City of Morgan Hill Comprehensive Annual Financial Report for the Year Ended June 30, 2017* (2017 CAFR), as publicly available from the Discharger's website. Prosecution Team evaluation of this factor based on the Discharger's 2017 CAFR (pages 5, 9, and 21) indicated the Discharger is projected to have $87,224,487 in unrestricted assets available to meet ongoing obligations. These figures appear to indicate the Discharger's ability to pay the proposed penalty. Therefore, no adjustment is proposed.

**Step 7. Other Factors as Justice May Require**

In addition, the Prosecution Team spent 135 hours of staff time at $133 per hour to investigate this case and prepare this analysis and supporting information. The Prosecution Teams finds that it is appropriate to increase the Total Base Liability amount by $18,012 in consideration of these investigation and enforcement costs. Increasing the Total Base Liability Amount in this manner serves to create a more appropriate deterrent against future violations.

[12] The Prosecution Team confirmed all penalty calculations using a Microsoft Excel spreadsheet known as the Penalty Calculation Methodology Worksheet. The State Water Board developed the worksheet to assist in applying the Enforcement Policy numeric factors. See footnote #1 on page 1 to access the version of the worksheet applied to this case. The worksheet output showing the results for this case is available upon request.

**Step 8. Economic Benefit**

The total economic benefit of noncompliance was determined to be approximately $1,244.

Pursuant to the Enforcement Policy, the economic benefit, savings or monetary gain derived from the acts that constitute a violation, must be determined for each violation. The Discharger realized measurable financial benefits associated with delayed I&I rehabilitation expenses.

As documented above, the Discharger failed to comply with Clean Water Act section 301 and Waste Discharge Requirements Order No. 2006-0003-DWQ. As a result, the Discharger has delayed costs associated with rehabilitating sections of its sanitary sewer system to prevent or minimize sewer system overflows caused or contributed to by I&I. The Discharger may have prevented or minimized the overflows had it implemented such projects before the dates of the respective rain events.

The Prosecution Team reviewed Discharger sewer system plans for such projects specific to the various SSO locations, including: *City of Morgan Hill Sewer System Master Plan, January 2002*; *City of Morgan Hill Sanitary Sewer Management Plan, July 2009*; *Sanitary Sewer Flow Monitoring and Inflow / Infiltration Study, May 2014*, and; *Morgan Hill Sewer System Master Plan, October 2017* (2017 Master Plan). While projects specific to the SSO locations were not found, Section 7.6 and Appendix D of the 2017 Master Plan included information related to I&I improvement projects and costs in sewer system areas relevant to the SSO locations.

2017 Master Plan Appendix D Sewer System maps for Group 3 and Group 6 generally correspond with the four SSO locations. Each map includes estimated costs per linear foot for sewer line trenchless rehabilitation to address I&I. 2017 Master Plan Section 7.6 includes 10 future I&I improvement projects, nine of which employ trenchless rehabilitation over an average length of 175 feet. Based on this information, the Prosecution Team determined the cost per linear foot for each Group map and multiplied that by the average length of 175 feet to estimate a rehabilitation project cost for each spill location. For the purposes of these calculations, the Prosecution Team assumed a project completion date of May 31, 2018[13], and that the Discharger will implement I&I improvement projects related to each spill location using trenchless

[13] Based on the City's sewer system upgrade webpage as of 4/16/2018 update), "*Infiltration and Inflow Rehabilitation Project. Replace/repair sewer pipes to reduce storm water infiltration. Council award expected April 18 to Pacific Underground Construction for $691,850. Construction anticipated in May 2018.*" Also noted above in Step 4.

rehabilitation. Based on those assumptions, the Prosecution Team considers the estimated project costs as delayed expenses.

The Prosecution Team used the BEN financial model provided by the United States Environmental Protection Agency to compute the total economic benefit of noncompliance. Cost estimate details and other assumptions are included in the attached Economic Benefit Analysis Table. For computational purposes, the Prosecution Team estimated the penalty payment date as June 1, 2018. Changes to this date or the assumed project completion date above will affect the total economic benefit estimate, but the Prosecution Team does not expect such changes to have a substantial effect on the calculated benefit amount or the final liability per the following sections. The total economic benefit of delayed I&I improvement projects was determined to be approximately $1,244.

**Step 9. Maximum and Minimum Liability Amounts**

The Enforcement Policy states that the total liability shall be at least 10 percent higher than the economic benefit, "so that liabilities are not construed as the cost of doing business and the assessed liability provides meaningful deterrent to future violations."

The minimum liability associated with economic benefit is approximately **$1,368 ($1,244 + 10% [or $124])**. Because the Final Liability Amount exceeds the economic benefit plus 10 percent, the Enforcement Policy requirement is satisfied.

The maximum administrative liability amount per gallon pursuant to Water Code sections 13385 is $10 per gallon discharged for every gallon over 1,000 that is not cleaned up. In addition, pursuant to Water Code section 13385, the maximum administrative liability amount per day is $10,000 for each day in which each violation occurs. Thus, the maximum liability amount is **$3,286,340** as calculated in the attached Penalty Calculation Methodology Worksheet.

**Step 10. Final Liability Amount**

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the unauthorized discharges of waste to waters of the U.S., including staff costs, is **$433,366**.

**Appendices**: A. Basin Plan Water Quality Objectives and Potential Harm to Present or Potential Beneficial Uses of Llagas Creek

**Attachments**: A1. U.S. EPA BEN Economic Benefit Analysis Table

A2. Summary Tables of City of Morgan Hill Significant and Categorical Industrial User 2017 Sampling vs 2011 & 2016 Basin Plan Water Quality Objectives

# APPENDIX A

**Basin Plan Water Quality Objectives and Potential Harm to Present or Potential Beneficial Uses of Llagas Creek**

| Water Quality Objective (WQO) | Beneficial Uses Associated with WQO, and Applicable Conditions | Potential Harm to Beneficial Uses from Untreated Domestic or Municipal Wastewater |
|---|---|---|
| Color: Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses. Coloration attributable to materials of waste origin shall not be greater than 15 units or 10 percent above natural background color, whichever is greater. | WQO applies to all inland surface waters, and is not limited to specific beneficial uses. Beneficial uses potentially harmed include:<br><br>- REC-2 | Untreated domestic wastewater is typically colored light brown to black. Industrial wastewater may have a variety of colors depending on the process[a] (WQ p.65, 169, and WW Eng p.64). Potential coloration of surface waters due to the discharged wastewater may cause nuisance and therefore potentially harm recreational activity beneficial uses, including those involving aesthetic enjoyment. |
| Tastes and Odors: Waters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible products of aquatic origin, that cause nuisance, or that adversely affect beneficial uses. | WQO applies to all inland surface waters, and is not limited to specific beneficial uses. Beneficial uses potentially harmed include:<br><br>- MUN<br>- REC-1<br>- REC-2<br>- COMM | Untreated domestic wastewater is typically odorous. Potential odors or tastes from the discharged wastewater may cause nuisance or impart undesirable tastes or odors to fish flesh or other edible aquatic products, and therefore potentially harm drinking water uses, recreational activity uses, including those involving aesthetic enjoyment, or beneficial uses involving organisms intended for human consumption. |

# APPENDIX A

| Water Quality Objective (WQO) | Beneficial Uses Associated with WQO, and Applicable Conditions | Potential Harm to Beneficial Uses from Untreated Domestic or Municipal Wastewater |
|---|---|---|
| Floating Material: Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses. | WQO applies to all inland surface waters, and is not limited to specific beneficial uses. Beneficial uses potentially harmed include:<br><br>- REC-1<br>- REC-2 | Untreated domestic wastewater typically contains floatable materials. Potential floating materials in the discharged wastewater may cause nuisance and therefore potentially harm recreational activity beneficial uses, including those involving aesthetic enjoyment. |
| Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses. | WQO applies to all inland surface waters, and is not limited to specific beneficial uses. Beneficial uses potentially harmed include:<br><br>- REC-1<br>- REC-2 | Untreated domestic wastewater typically has a suspended solids concentration ranging from 100 mg/L to 350 mg/L[a (WW Eng Table 3-16)]. Industrial source sampling conducted in 2017* also indicated suspended solids concentrations within that range. Potential suspended materials in the discharged wastewater may cause nuisance and therefore potentially harm recreational activity beneficial uses, including those involving aesthetic enjoyment. |

# APPENDIX A

| Water Quality Objective (WQO) | Beneficial Uses Associated with WQO, and Applicable Conditions | Potential Harm to Beneficial Uses from Untreated Domestic or Municipal Wastewater |
|---|---|---|
| Settleable Material: Waters shall not contain settleable material in concentrations that result in deposition of material that causes nuisance or adversely affects beneficial uses. | WQO applies to all inland surface waters, and is not limited to specific beneficial uses. Beneficial uses potentially harmed include:<br><br>- WILD<br>- COLD<br>- WARM<br>- MIGR<br>- SPWN<br>- COMM | Untreated domestic wastewater typically contains settleable solids with a volume ratio ranging from 5 mL/L to 20 mL/L[a] (WW Eng Table 3-16). Potential settleable materials in the discharged wastewater may cause nuisance or deposition over aquatic habitats and therefore potentially harm recreational activity beneficial uses, including those involving aesthetic enjoyment, and aquatic habitat-related beneficial uses. |
| Oil and Grease: Waters shall not contain oils, greases, waxes, or other similar materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses. | WQO applies to all inland surface waters, and is not limited to specific beneficial uses. Beneficial uses potentially harmed include:<br><br>- REC-2 | Untreated domestic wastewater typically contains oil and grease in concentrations ranging from 50 mg/L to 150 mg/L[a] (WW Eng Table 3-16). Potential oil and grease in the discharged wastewater may cause visible films or coatings on water or object surfaces that cause nuisance and therefore potentially harm recreational activity beneficial uses that involve aesthetic enjoyment. |
| Biostimulatory Substances: Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses. | WQO applies to all inland surface waters, and is not limited to specific beneficial uses. Beneficial uses potentially harmed include:<br><br>- WARM<br>- COLD<br>- RARE<br>- MIGR<br>- SPWN<br>- MUN<br>- GWR<br>- REC-1<br>- REC-2<br>- AGR | Untreated domestic wastewater typically contains biostimulatory substances in the forms of total nitrogen and phosphorus in the respective concentration ranges of 20 mg/L to 85 mg/L, and 4 mg/L to 15 mg/L[a] (WW Eng Table 3-16). Potential biostimulatory substances in the discharged wastewater may promote aquatic growths that cause nuisance or deplete dissolved oxygen and therefore potentially harm recreational activity beneficial uses, including those involving aesthetic enjoyment, and aquatic habitat-related beneficial uses. |

# APPENDIX A

| Water Quality Objective (WQO) | Beneficial Uses Associated with WQO, and Applicable Conditions | Potential Harm to Beneficial Uses from Untreated Domestic or Municipal Wastewater |
|---|---|---|
| Turbidity: Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. | WQO applies to all inland surface waters, and is not limited to specific beneficial uses. Beneficial uses potentially harmed include:<br><br>- REC-2 | Potential turbidity in the discharged wastewater may decrease clarity of surface water and cause nuisance, and therefore potentially harm recreational activity beneficial uses that involve aesthetic enjoyment. |
| Toxicity: All waters shall be maintained free of toxic substances in concentrations which are toxic to, or which produce detrimental physiological responses in, human, plant, animal, or aquatic life. | WQO applies to all inland surface waters, and is not limited to specific beneficial uses. Beneficial uses potentially harmed include:<br><br>- MUN<br>- AGR<br>- WILD<br>- COLD<br>- WARM<br>- MIGR<br>- SPWN<br>- COMM<br>- REC-1 | Untreated domestic wastewater typically contains ammonia in concentrations ranging from 12 mg/L to 50 mg/L[a (WW Eng Table 3-16)]. Industrial wastewater sampling conducted in 2017* indicated the presence of potentially toxic metals and organic chemicals. Potential ammonia, metals, or chemicals in the discharged wastewater may be toxic to, or produce detrimental physiological responses in, human, plant, animal, or aquatic life and therefore potentially harm drinking water, recreational activity, and aquatic habitat-related beneficial uses. |
| pH: The pH value shall neither be depressed below 6.5 nor raised above 8.3 | MUN<br>AGR<br>REC-1<br>REC-2 | Typical domestic wastewater can have a pH within the WQO range[a (WQ Table 3.1)], but industrial sources can contribute wastewater outside of that range. Industrial wastewater sampling conducted in 2017* indicated pH values outside of the WQO range. Though not a definitive characterization of the untreated wastewater discharged in the SSOs, it confirms the wastewater's potential to have pH values outside of the WQO range and therefore potentially harm the MUN, AGR, REC-1, and REC-2 beneficial uses. |

# APPENDIX A

| Water Quality Objective (WQO) | Beneficial Uses Associated with WQO, and Applicable Conditions | Potential Harm to Beneficial Uses from Untreated Domestic or Municipal Wastewater |
|---|---|---|
| Organic Chemicals: All inland surface waters, enclosed bays, and estuaries shall not contain concentrations of organic chemicals in excess of the limiting concentrations set forth in California Code of Regulations, Title 22, Chapter 15, Article 5.5, Section 64444.5, Table 5 and listed in Table 3-1.[1] | MUN | Industrial wastewater sampling conducted in 2017* indicated the presence of one of the organic chemicals listed in Basin Plan Table 3-1 in one sample involving one of the industrial dischargers, with that sample below the WQO. Though not a definitive characterization of the untreated wastewater discharged in the SSOs, it confirms the wastewater's potential to include such chemicals and therefore potentially harm the MUN beneficial use. The City of Gilroy Chemical Control Program (CCP) provided discharge logs from the sampled facility that indicate it did not discharge during the SSO periods. |

[1] This California Code of Regulations (CCR) reference has been updated and replaced by Title 22, *Division 4*, Chapter 15, Article 5.5, Section *64444*, Table *64444-A* (emphasis added). The language quoted here is from the 2011 and 2016 Basin Plan versions in effect at the time of the violations, which includes the language "and listed in Table 3-1". Although the Basin Plan Table 3-1 list of organic chemicals is not as comprehensive as the updated CCR, this factor consideration is limited to the chemicals listed in Table 3-1. The 2017 Basin Plan acknowledges the latest CCR update.

# APPENDIX A

| Water Quality Objective (WQO) | Beneficial Uses Associated with WQO, and Applicable Conditions | Potential Harm to Beneficial Uses from Untreated Domestic or Municipal Wastewater |
|---|---|---|
| Inorganic Chemical Constituents for MUN: Waters shall not contain concentrations of chemical constituents in excess of the limits specified in California Code of Regulations, Title 22, Article 4, Chapter 15, Section 64435, Tables 2 and 3 as listed in Table 3-2.[2] | MUN | Industrial wastewater sampling conducted in 2017* indicated the presence of four of the inorganic chemicals listed in Basin Plan Table 3-2 in eight samples involving three of the industrial dischargers, with one sample exceeding a WQO. The CCP provided information indicating that the days and hours of operation and potential discharge for one of the three dischargers corresponds with SSO #1 and #4. Though not a definitive characterization of the untreated wastewater discharged in the SSOs, it confirms the wastewater's potential to include such chemicals and therefore potentially harm the MUN beneficial use. |
| Dissolved Oxygen: 2.0 mg/l or greater at any time. | AGR | Organic materials (and therefore oxygen demand), biostimulatory substances (e.g., nitrogen and phosphorus), and ammonia typically found in the untreated domestic wastewater may deplete dissolved oxygen in surface waters and therefore potentially harm the AGR beneficial use. |

[2] This California Code of Regulations (CCR) reference has been updated and replaced by Title 22, *Division 4*, Chapter 15, Article 4, Section *64431*, Table *64431-A* (emphasis added). The language quoted here is from the 2011 and 2016 Basin Plan versions in effect at the time of the violations, which includes the language "as listed in Table 3-2". Although the Basin Plan Table 3-2 list of inorganic chemicals is not as comprehensive as the updated CCR, this factor consideration is limited to the chemicals listed in Table 3-2. The 2017 Basin Plan acknowledges the latest CCR update.

# APPENDIX A

| Water Quality Objective (WQO) | Beneficial Uses Associated with WQO, and Applicable Conditions | Potential Harm to Beneficial Uses from Untreated Domestic or Municipal Wastewater |
|---|---|---|
| Chemical Constituents for AGR: Waters shall not contain concentrations of chemical constituents in amounts which adversely affect the agricultural beneficial use as determined in Table 3-3. See Basin Plan for further detail. | AGR | Influent sampling at the SCRWA WWTP indicates that the annual average electrical conductivity (a measure of salinity) of the Discharger's untreated municipal wastewater was 1.314 mmho/cm, which per Table 3-3 indicates increasing problems for agricultural irrigation. Though not a definitive characterization of the untreated wastewater discharged in the SSOs, it confirms the wastewater's potential to harm the AGR beneficial use. |
| Chemical Constituents for AGR: Waters shall not contain concentrations of chemical constituents in amounts which adversely affect the agricultural beneficial use as determined in Table 3-4. See Basin Plan for further detail. | AGR | Industrial wastewater sampling conducted in 2017* indicated the presence of seven of the chemicals listed in Basin Plan Table 3-4 in eighteen samples involving all five of the industrial dischargers, with two samples exceeding a WQO. The CCP provided information indicating that the days and hours of operation and potential discharge for two of the five dischargers correspond with SSO #1, #3, and #4. Though not a definitive characterization of the untreated wastewater discharged in the SSOs, it confirms the wastewater's potential to include such chemicals and therefore potentially harm the AGR beneficial use. |
| Bacteria for REC-1: Fecal coliform concentration, based on a minimum of not less than five samples for any 30-day period, shall not exceed a log mean of 200/100 ml, nor shall more than ten percent of total samples during any 30-day period exceed 400/100 ml. | REC-1 | Fecal coliform are typically found in untreated domestic wastewater in numbers ranging from 10,000 to 100,000 per mL[a] (WW Eng Table 3-18), which indicates the discharged wastewater's potential to exceed this WQO and potentially harm the REC-1 beneficial use. |

# APPENDIX A

| Water Quality Objective (WQO) | Beneficial Uses Associated with WQO, and Applicable Conditions | Potential Harm to Beneficial Uses from Untreated Domestic or Municipal Wastewater |
|---|---|---|
| Bacteria for REC-2: Fecal coliform concentration, based on a minimum of not less than five samples for any 30-day period, shall not exceed a log mean of 2000/100 ml, nor shall more than ten percent of samples collected during any 30-day period exceed 4000/100 ml. | REC-2 | Fecal coliform are typically found in untreated domestic wastewater in numbers ranging of 10,000 to 100,000 per mL[a] (WW Eng Table 3-18), which indicates the discharged wastewater's potential to exceed this WQO and potentially harm the REC-2 beneficial use. |
| pH for COLD, WARM: The pH value shall not be depressed below 7.0 or raised above 8.5. Changes in normal ambient pH levels shall not exceed 0.5 in fresh waters. | COLD, WARM | Typical domestic wastewater can have a pH within the WQO range [a (WQ Table 3.1)], but industrial wastewater sampling conducted in 2017* indicated pH values outside of the WQO range. Though not a definitive characterization of the untreated wastewater discharged in the SSOs, it confirms the wastewater's potential to have pH values outside of the WQO range, or to potentially alter ambient pH levels, and therefore potentially harm the COLD or WARM beneficial uses. |
| Dissolved Oxygen for COLD: The dissolved oxygen concentration shall not be reduced below 7.0 mg/l at any time. | COLD, SPWN | Potential organic materials (and therefore oxygen demand), biostimulatory substances (e.g., nitrogen and phosphorus), and ammonia in the discharged wastewater may deplete dissolved oxygen in surface waters and therefore potentially harm the COLD or SPWN beneficial uses. |

# APPENDIX A

| Water Quality Objective (WQO) | Beneficial Uses Associated with WQO, and Applicable Conditions | Potential Harm to Beneficial Uses from Untreated Domestic or Municipal Wastewater |
|---|---|---|
| Chemical Constituents for COLD, WARM: Waters shall not contain concentrations of chemical constituents known to be deleterious to fish or wildlife (i.e., toxic metals) in excess of the limits listed in Basin Plan Table 3-5. | COLD, WARM | Industrial wastewater sampling conducted in 2017* indicated the presence of four of the toxic metals listed in Basin Plan Table 3-5 in fourteen samples involving all five of the industrial dischargers, with ten samples exceeding two WQOs. The CCP provided information indicating that the days and hours of operation and potential discharge for two of the five dischargers correspond with SSO #1, #3, and #4. Though not a definitive characterization of the untreated wastewater discharged in the SSOs, it confirms the wastewater's potential to include such chemicals and therefore potentially harm the COLD and WARM beneficial uses. |
| Dissolved Oxygen for WARM: The dissolved oxygen concentration shall not be reduced below 5.0 mg/l at any time. | WARM | Potential organic materials (and therefore oxygen demand), biostimulatory substances (e.g., nitrogen and phosphorus), and ammonia in the discharged wastewater may deplete dissolved oxygen in surface waters and therefore potentially harm the WARM beneficial use. |

# APPENDIX A

| Water Quality Objective (WQO) | Beneficial Uses Associated with WQO, and Applicable Conditions | Potential Harm to Beneficial Uses from Untreated Domestic or Municipal Wastewater |
|---|---|---|
| Cadmium: Cadmium shall not exceed 0.003 mg/l in hard water or 0.0004 mg/l in soft water at any time. (Hard water is defined as water exceeding 100 mg/l CaCO3.) | SPWN | Cadmium was not shown among the toxic metals detected during industrial wastewater sampling in 2017*. However, it is a common byproduct in the metal plating and electronics industries involving three of the Discharger's industrial users. Cadmium was also consistently present in the SCRWA WWTP biosolids sampling conducted throughout 2017^. These circumstances indicate the potential presence of cadmium in the discharged wastewater, and therefore potential harm to the SPWN beneficial use. |

* Refers to sampling data from the *South County Regional Wastewater Authority 2017 Pretreatment Annual Report, January 25, 2018*, for the five SIU and CIU industrial facilities in the City of Morgan Hill that contribute wastewater to the City's sanitary sewer system. These references are specific to SSO #1, #3, and #4. According to Figures 4.2, 4.3, and 4.4 of the *City of Morgan Hill Sewer System Master Plan Final, October 2017*, SSO #2 occurred in the Hale-Monterey Trunk Basin, a section of the sanitary sewer system that does not receive wastes from the industries sampled. Data are tabulated in Attachment A3. In emails dated March 19 through March 21, 2018, the City of Gilroy Chemical Control Program provided information indicating that, due to the days of the week and hours of the day the facilities typically operate, it was likely that two of the five facilities potentially contributed to SSO #1, #3, and #4.

^ *South County Regional Wastewater Authority 2017 Annual Report for Municipal Wastewater Treatment Facilities, January 3, 2018*, Table 7, Biosolids Analytical Report.

[a] Typical wastewater characteristics derived from Tchobanoglous, G. and Schroeder, E. *Water Quality*, 1985, and Metcalf & Eddy, *Wastewater Engineering*, 3rd Edition, 1991. Superscripted references within the table are abbreviated as "WQ" and "WW Eng", respectively.

ACL Order No. R3-2019-0039
Attachment A, Sub-Attachment A1

# Economic Benefit Analysis

## City of Morgan Hill - Sewage Collection System

| Compliance Action | Cost Type | Cost Type Details | | | | Non-Compliance Date | Compliance Date | Penalty Payment Date | Discount Rate | Benefit of Non-Compliance |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Cost Estimate | Cost Index | Estimate Date | Delayed? | | | | | |
| I&I Rehabilitation @ 14240 Monterey Hwy (12/10/15 SSO #1) | One-Time Non-Depr Exp | $ 14,350.00 | PCI | 4/19/2018 | Y | 12/10/2015 | 5/31/2018 | 6/1/2018 | 3.5% | $ 588.00 |
| I&I Rehabilitation @ Ciolino & Monterey Hwy (1/8/17 SSO #2) | One-Time Non-Depr Exp | $ 13,825.00 | PCI | 4/19/2018 | Y | 1/8/2017 | 5/31/2018 | 6/1/2018 | 3.3% | $ 223.00 |
| I&I Rehabilitation @ 12690 Harding Ave (1/8/17 SSO #3) | One-Time Non-Depr Exp | $ 14,350.00 | PCI | 4/19/2018 | Y | 1/8/2017 | 5/31/2018 | 6/1/2018 | 3.3% | $ 231.00 |
| I&I Rehabilitation @ 12690 Harding Ave (2/20/17 SSO #4) | One-Time Non-Depr Exp | $ 14,350.00 | PCI | 4/19/2018 | Y | 2/20/2017 | 5/31/2018 | 6/1/2018 | 3.3% | $ 202.00 |

**Total Benefit:** $ 1,244.00

**Income Tax Schedule:** Municipality **Analyst:** Todd Stanley

**USEPA BEN Model Version:** Version 5.7.0 (March 2017) **Date/Time of Analysis:** 4/19/2018 11:34

**Assumptions:**

1 All activities require trenchless rehabilitation.
2 Costs per linear ft for trenchless rehabilitation per Discharger's 2017 SSM(aster)P, Appendix D, Group 3 & 6 Maps are reasonably applied here.
3 SSO #1, #3, and #4 occurred in Group 6 per App D, and therefore Group 6 rehabilitation cost estimates can be applied to these SSOs.
4 SSO #2 occurred in Group 3 per App D, and therefore Group 3 rehabilitation cost estimates can be applied to this SSO.
5 Discharger will complete projects by May 31, 2018.
6 Avg length of rehab sewer line is 175 ft based on 9 I&I improvement projects already planned by Discharger per Sec 7.6 of 2017 SSM(aster)P.
7 All compliance actions are indexed using the Plant Cost Index (PCI).
8 Although two SSOs occurred at the same location, the economic benefit of not implementing I&I rehab is considered independently for each.

**Notes:**

"Non-Depr Exp" = Non-Depreciable Expense
"LF" = Linear Feet

**Cost Est. Calculations:**

Trenchless Rehabilitation Cost/LF for Appendix D Group 6 Map: $282,560 / 3,447 feet = approximately $82/foot
Trenchless Rehabilitation Cost/LF for Appendix D Group 3 Map: $375,380 / 4,760 feet = approximately $79/foot
I&I Rehabilitation for SSO #1, #3, and #4 Locations: $82 x 175 feet = $14,350 for each of three projects.
I&I Rehabilitation for 1/8/17 SSO #2 (Ciolino & Monterey Hwy) Location: $79 x 175 feet = $13,825.

# Attachment A2

## Summary Tables of City of Morgan Hill Significant and Categorical Industrial User 2017 Sampling vs 2011 & 2016 Basin Plan Water Quality Objectives

Tabulation of data referenced in Table 2: *Basin Plan Water Quality Objectives and Potential Harm to Present or Potential Beneficial Uses of Llagas Creek*. City of Morgan Hill data derived from laboratory analytical results included in the South County Regional Wastewater Authority 2017 Pretreatment Annual Report, January 25, 2018. The City of Gilroy Chemical Control Program (CCP) implements the Discharger's Pretreatment Program and prepares its annual reports. CCP emails to the Prosecution Team from March 19, 2018, through March 21, 2018, provided the information serving as the basis for the footnotes regarding potential pollutant contributions from the tabulated industries. Concentrations of milligrams per liter are abbreviated as "mg/L" for all tables.

According to Figures 4.2, 4.3, and 4.4 of the City of Morgan Hill Sewer System Master Plan Final, October 2017, SSO #2 occurred in the Hale-Monterey Trunk Basin, a section of the sanitary sewer system that does not receive wastes from the industries sampled. SSO #2 is therefore not considered among the SSOs potentially affected by wastewater discharges from the industrial facilities sampled.

**Table A2-1**

**City of Morgan Hill Significant and Categorical Industrial User 2017 Sampling vs 2011 & 2016 Basin Plan Table 3-1 Organic Chemical WQO Related to MUN**

Blank fields indicate either non-detect or not analyzed.

| Pollutant Name | BP Maximum Contaminant Level (MCL) mg/L | Airtronics Metal Products[1] (CIU) 2017 Sampling Conc. mg/L | Anritsu Corp. (CIU) 2017 Sampling Conc. mg/L | GMP Metal Plating (CIU) 2017 Sampling Conc. mg/L | Twin Glass Ind. (CIU) 2017 Sampling Conc. mg/L | Kettle Cuisine Del Monaco Spec. Foods (SIU) 2017 Sampling Conc. mg/L |
|---|---|---|---|---|---|---|
| **(a) Chlorinated Hydrocarbons** | | | | | | |
| **Endrin** | 0.0002 | | | | | |
| **Lindane** | 0.004 | | | | | |
| **Methoxychlor** | 0.1 | | | | | |
| **Toxaphene** | 0.005 | | | | | |
| **(b) Chlorophenoxys** | | | | | | |
| **2,4-D** | 0.1 | | | | | |
| **2,4,5-TP Silvex** | 0.01 | | | | | |
| **(c) Synthetics** | | | | | | |
| **Atrazine** | 0.003 | | | | | |
| **Bentazon** | 0.018 | | | | | |
| **Benzene** | 0.001 | | | | | |
| **Carbon Tetrachloride** | 0.0005 | | | | | |
| **Carbofuran** | 0.018 | | | | | |
| **Chlordane** | 0.0001 | | | | | |

[1] Airtronics did not commence discharge to the sanitary sewer system until July 30, 2016. Therefore, Airtronics did not contribute wastewater during SSO #1 on December 10, 2015. Furthermore, Airtronics discharge logs indicate that the facility did not discharge during SSO #3 on January 8, 2017, or SSO #4 on February 20, 2017.

| | | | | | | |
|---|---|---|---|---|---|---|
| **1,2-Dibromo-3-chloropropane** | 0.0002 | | | | | |
| **1,4-Dichlorobenzene** | 0.005 | | | | | |
| **1,1-Dichloroethane** | 0.005 | | | | | |
| **1,2-Dichloroethane** | 0.0005 | | | | | |
| **cis-1,2-Dichloroethylene** | 0.006 | | | | | |
| **trans-1,2-Dichloroethylene** | 0.01 | | | | | |
| **1,1-Dichloroethylene** | 0.006 | | | | | |
| **1,2-Dichloropropane** | 0.005 | | | | | |
| **1,3-Dichloropropene** | 0.0005 | | | | | |
| **Di(2-ethylhexyl) phthalate** | 0.004 | | | | | |
| **Ethylbenzene** | 0.680 | | | | | |
| **Ethylene Dibromide** | 0.00002 | | | | | |
| **Glyphosate** | 0.7 | | | | | |
| **Heptachlor** | 0.00001 | | | | | |
| **Heptachlor epoxide** | 0.00001 | | | | | |
| **Molinate** | 0.02 | | | | | |
| **Monochlorobenzene** | 0.030 | | | | | |
| **Simazine** | 0.010 | | | | | |
| **1,1,2,2-Tetrachloroethane** | 0.001 | | | | | |
| **Tetrachloroethylene** | 0.005 | | | | | |
| **Thiobencarb** | 0.07 | | | | | |
| **1,1,1-Trichloroethane** | 0.200 | | | | | |
| **1,1,2-Trichloroethane** | 0.032 | | | | | |
| **Trichloroethylene** | 0.005 | | | | | |
| **Trichlorofluromethane** | 0.15 | | | | | |
| **1,1,2-Trichloro-1,2,2-Trifluoroethane** | 1.2 | | | | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| **Vinyl Chloride** | 0.0005 | | | | | |
| **Xylenes** | 1.750 | 0.0082 | | | | |

**Table A2-2**

**City of Morgan Hill Significant and Categorical Industrial User 2017 Sampling vs 2011 & 2016 Basin Plan Table 3-2 Inorganic Chemical WQO Related to MUN**

Italicized entries indicate value exceeds WQO. Blank fields indicate either non-detect or not analyzed.

| Pollutant Name | BP Maximum Contaminant Level (MCL) mg/L | Airtronics Metal Products[2] (CIU) 2017 Sampling Conc. (mg/L) | Anritsu Corp. (CIU) 2017 Sampling Conc. (mg/L) | GMP Metal Plating[3] (CIU) 2017 Sampling Conc. (mg/L) | Twin Glass Ind.[4] (CIU) 2017 Sampling Conc. (mg/L) | Kettle Cuisine Del Monaco Spec. Foods (SIU) 2017 Sampling Conc. (mg/L) |
|---|---|---|---|---|---|---|
| **Aluminum** | 1 | | | | | |
| **Arsenic** | 0.05 | 0.015 | | | 0.0088 | |
| **Barium** | 1 | 0.067 | | 0.096 | 0.11 | |
| **Cadmium** | 0.010 | | | | | |
| **Chromium** | 0.05 | *0.12* | | 0.013 | | |
| **Lead** | 0.05 | | | | | |
| **Mercury** | 0.002 | | | | | |
| **Nitrate (as NO3)** | 45 | | | | | |
| **Selenium** | 0.01 | | | | | |
| **Silver** | 0.05 | 0.011 | | | | |

[2] Airtronics did not commence discharge to the sanitary sewer system until July 30, 2016. Therefore, Airtronics did not contribute wastewater during SSO #1 on December 10, 2015. Furthermore, Airtronics discharge logs indicate that the facility did not discharge during SSO #3 on January 8, 2017, or SSO #4 on February 20, 2017.

[3] GMP Metal Plating was a potential contributor to SSO #1 and SSO #4 because its typical days and hours of operation and discharge potentially correspond with the periods covered by those SSOs.

[4] The typical days and hours of operation and discharge for Twin Glass Industries do not correspond with the periods covered by the SSOs. It is therefore unlikely that pollutants in its discharges contributed to the SSOs.

**Table A2-3**

**City of Morgan Hill Significant and Categorical Industrial User 2017 Sampling vs 2011 & 2016 Basin Plan Table 3-4 WQO Related to AGR**

Italicized entries indicate value exceeds WQO. Blank fields indicate either non-detect or not analyzed.

| Pollutant Name | BP Maximum Conc. mg/L for Irrig. Supply | BP Maximum Conc. mg/L for Livestock Watering | Airtronics Metal Products[5] (CIU) 2017 Sampling Conc. (mg/L) | Anritsu Corp.[6] (CIU) 2017 Sampling Conc. (mg/L) | GMP Metal Plating[7] (CIU) 2017 Sampling Conc. (mg/L) | Twin Glass Ind.[6] (CIU) 2017 Sampling Conc. (mg/L) | Kettle Cuisine Del Monaco Spec. Foods[7] (SIU) 2017 Sampling Conc. (mg/L) |
|---|---|---|---|---|---|---|---|
| **Aluminum** | 5.0 | 5.0 | | | | | |
| **Arsenic** | 0.1 | 0.2 | 0.015 | | | 0.0088 | |
| **Beryllium** | 0.1 | No value | | | | 0.0061 | |
| **Boron** | 0.75 | 5.0 | | | | | |
| **Cadmium** | 0.01 | 0.05 | | | | | |
| **Chromium** | 0.10 | 1.0 | *0.12* | | 0.013 | | |
| **Cobalt** | 0.05 | 1.0 | | | 0.046 | | |
| **Copper** | 0.2 | 0.5 | 0.17 | 0.023 | 0.24 | 0.064 | 0.033 |
| **Fluoride** | 1.0 | 2.0 | | | | | |
| **Iron** | 5.0 | No value | | | | | |
| **Lead** | 5.0 | 0.1 | | | | | |

[5] Airtronics did not commence discharge to the sanitary sewer system until July 30, 2016. Therefore, Airtronics did not contribute wastewater during SSO #1 on December 10, 2015. Furthermore, Airtronics discharge logs indicate that the facility did not discharge during SSO #3 on January 8, 2017, or SSO #4 on February 20, 2017.

[6] The typical days and hours of operation and discharge for Anritsu Corporation and Twin Glass Industries do not correspond with the periods covered by the SSOs. It is therefore unlikely that pollutants in discharges from these facilities contributed to the SSOs.

[7] GMP Metal Plating was a potential contributor to SSO #1 and SSO #4 because its days and hours of operation and discharge typically correspond with the periods covered by those SSOs. Similarly, Kettle Cuisine was a potential contributor to SSO #1, #3, and #4.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| **Lithium** | 2.5 | No value | | | | | |
| **Manganese** | 0.2 | No value | | | | | |
| **Mercury** | No value | 0.01 | | | | | |
| **Molybdenum** | 0.01 | 0.5 | | | | | |
| **Nickel** | 0.2 | No value | 0.064 | | | 0.012 | |
| **Nitrate + Nitrite** | No value | 100 | | | | | |
| **Nitrite** | No value | 10 | | | | | |
| **Selenium** | 0.02 | 0.05 | | | | | |
| **Vanadium** | 0.1 | 0.10 | | | | | |
| **Zinc** | 2.0 | 25 | *2.1* | 0.13 | 0.35 | 0.89 | 0.18 |

**Table A2-4**

**City of Morgan Hill Significant and Categorical Industrial User 2017 Sampling vs 2011 & 2016 Basin Plan Table 3-5 Toxic Metals in Aquatic Life Habitats WQO Related to Freshwater COLD and WARM**

Italicized entries indicate value exceeds WQO. Blank fields indicate either non-detect or not analyzed.

| Pollutant Name | BP Maximum Conc. mg/L for Hard Water | BP Maximum Conc. mg/L for Soft Water | Airtronics Metal Products[8] (CIU) 2017 Sampling Conc. (mg/L) | Anritsu Corp.[9] (CIU) 2017 Sampling Conc. (mg/L) | GMP Metal Plating[10] (CIU) 2017 Sampling Conc. (mg/L) | Twin Glass Ind.[9] (CIU) 2017 Sampling Conc. (mg/L) | Kettle Cuisine Del Monaco Spec. Foods[10] (SIU) 2017 Sampling Conc. (mg/L) |
|---|---|---|---|---|---|---|---|
| **Cadmium** | 0.03 | 0.004 | | | | | |
| **Chromium** | 0.05 | 0.05 | 0.12 | | 0.013 | | |
| **Copper** | 0.03 | 0.01 | *0.17* | *0.023* | *0.24* | *0.064* | *0.033* |
| **Lead** | 0.03 | 0.03 | | | | | |
| **Mercury** | 0.0002 | 0.0002 | | | | | |
| **Nickel** | 0.4 | 0.1 | 0.064 | | | 0.012 | |
| **Zinc** | 0.2 | 0.004 | *2.1* | *0.13* | *0.35* | *0.89* | *0.18* |

[8] Airtronics did not commence discharge to the sanitary sewer system until July 30, 2016. Therefore, Airtronics did not contribute wastewater during SSO #1 on December 10, 2015. Furthermore, Airtronics discharge logs indicate that the facility did not discharge during SSO #3 on January 8, 2017, or SSO #4 on February 20, 2017.

[9] The typical days and hours of operation and discharge for Anritsu Corporation and Twin Glass Industries do not correspond with the periods covered by the SSOs. It is therefore unlikely that pollutants in discharges from these facilities contributed to the SSOs.

[10] GMP Metal Plating was a potential contributor to SSO #1 and SSO #4 because its days and hours of operation and discharge typically correspond with the periods covered by those SSOs. Similarly, Kettle Cuisine was a potential contributor to SSO #1, #3, and #4.

**Table A2-5**

**City of Morgan Hill Significant and Categorical Industrial User 2017 Sampling vs 2011 & 2016 Basin Plan pH WQO Related to MUN, AGR, REC-1, REC-2**

Italicized entries indicate value exceeds WQO. All values in pH standard units.

| Pollutant Name | BP Minimum (Standard Units) | BP Maximum (Standard Units) | Airtronics Metal Products (CIU) 2017 Sampling | Anritsu Corp.[11] (CIU) 2017 Sampling | GMP Metal Plating[12] (CIU) 2017 Sampling | Twin Glass Ind. (CIU) 2017 Sampling | Kettle Cuisine Del Monaco Spec. Foods[12] (SIU) 2017 Sampling |
|---|---|---|---|---|---|---|---|
| **pH** | 6.5 | 8.3 | Not Analyzed | *2.62* | *9.61* | Not Analyzed | *5.52* |

[11] The typical days and hours of operation and discharge for Anritsu Corporation do not correspond with the periods covered by the SSOs. It is therefore unlikely that pollutants in discharges from this facility contributed to the SSOs.

[12] GMP Metal Plating was a potential contributor to SSO #1 and SSO #4 because its days and hours of operation and discharge typically correspond with the periods covered by those SSOs. Similarly, Kettle Cuisine was a potential contributor to SSO #1, #3, and #4.

**Table A2-6**

**City of Morgan Hill Significant and Categorical Industrial User Other Pollutants**

Blank fields indicate either non-detect or not analyzed.

| Pollutant Name | BP Maximum Conc. mg/L | BP Maximum Conc. mg/L | Airtronics Metal Products[13] (CIU) 2017 Sampling Conc. mg/L | Anritsu Corp. (CIU) 2017 Sampling Conc. mg/L | GMP Metal Plating (CIU) 2017 Sampling Conc. mg/L | Twin Glass Ind.[14] (CIU) 2017 Sampling Conc. mg/L | Kettle Cuisine Del Monaco Spec. Foods[15] (SIU) 2017 Sampling Conc. mg/L or as shown |
|---|---|---|---|---|---|---|---|
| **TSS** | | | 230 | | | 260 | 240, 200 |
| **Set. Solids** | | | | | | | 0.10 mL/L[16] |
| **Oil & Grease** | | | | | | | 7.8 |
| **BOD** | | | 94 | | | 43 | 3700, 730 |
| **Nutrients/ Biostimulatory Materials** | | | | | | | |

[13] Airtronics did not commence discharge to the sanitary sewer system until July 30, 2016. Therefore, Airtronics did not contribute wastewater during SSO #1 on December 10, 2015. Furthermore, Airtronics discharge logs indicate that the facility did not discharge during SSO #3 on January 8, 2017, or SSO #4 on February 20, 2017.

[14] The typical days and hours of operation and discharge for Twin Glass Industries do not correspond with the periods covered by the SSOs. It is therefore unlikely that pollutants in discharges from this facility contributed to the SSOs.

[15] Kettle Cuisine was a potential contributor to SSO #1, #3, and #4 because its days and hours of operation and discharge typically correspond with the periods covered by those SSOs.

[16] "mL/L" – milliliters per liter.

ATTACHMENT B

Settlement Agreement and Stipulated Administrative Civil Liability
Stipulated Order No. R3-2019-0039
City of Morgan Hill

## City of Morgan Hill Enhanced Compliance Actions (ECAs)

### ECA 1: Morgan Hill Sanitary Sewer System Asset Management Plan Development and Implementation Project

### ECA 1 Project Scope of Work:

**Task 1 – Project management**
This task includes activities needed for general project management. Items such as project status reports, scheduling, accounting, and record keeping are performed under this task.

**Task 2 – Develop asset inventory**
This task consists of record reviews and field surveys needed to create an asset inventory. The inventory will include age and type of materials, rim and invert elevation data and other system data. Information developed in this task will be incorporated into the City GIS database. The following are expected subtasks.

- Records review: Reviewing City sewer utility record drawings and design reports will be done under this subtask. Asset type, size, material, elevations, and age will be determined.

- Pipe inspection reports review: Inspections records will be reviewed to determine and confirm pipe sizes and materials.

- Field survey: The field surveys will be used to collect asset data where records are not available. The surveys will determine rim and invert elevations, pipe materials, wet well volumes and document siphon configurations. All elevations will be resolved to the NGVD 88 standard[1].

    - Manholes will be surveyed to determine rim and invert elevations.
    - Siphons configuration and elevations will be obtained.
    - Lift Station Wet Wells configurations and elevations will be obtained.

- Build Asset Inventory and incorporate in Geographic Information System (GIS) Database.

[1] North American Vertical Datum of 1988. A vertical datum is a surface of zero elevation to which heights of various points are referenced.

**Task 3 – Determine asset criticality score**
Critical assets will be defined based on consequence of failure. Assets will be in failure if they don't meet level of service definitions included in the City Sewer Master Plan (SSMP). Factors such as location, flow rate, pipe size, slope, and area served will be used to determine a criticality score for all assets.

**Task 4 – Estimate risk of failure and remaining asset life**
Condition rating data obtained from CCTV operations will be analyzed in conjunction with the scoring from Task 6 to produce an estimate of the risk of failure and remaining life for assets.

**Task 5 – Prepare a risk-based repair and replacement schedule**
Rank assets according to risk and consequence of failure. Prepare a repair and replacement schedule to correct the assets posing the greatest risk and consequence of failure.

**Task 6 – Prepare asset management plan**
The asset management plan incorporates the tasks of this project into the SSMP. The outcome will be operational and management changes that continue asset management practices through time.

**Table 1: ECA 1 Project Schedule**

| Task | Completion (Days After Central Coast Water Board Approval) |
|---|---|
| Initiate Project | 10 |
| Prepare Request for Proposal | 35 |
| Solicit Proposals & Select Consultant | 95 |
| Negotiate Scope of Work and Budget | 115 |
| City Council Approval | 130 |
| Issue Notice to Proceed | 135 |
| Project Start-Up Meeting | 145 |
| Start Asset Inventory | 155 |
| Records Review | 220 |
| Field Survey | 400 |
| Complete Asset Inventory | 430 |
| Define Levels of Service and Critical Assets | 460 |
| Perform Risk of Failure Analysis for Critical Assets | 480 |
| Prepare a Risk-Based Repair and Replacement Schedule | 500 |
| Close Project | 515 |

**Table 2: ECA 1 Project Budget**

| Billing Rate/Day | Project Manager $ 1,600 | Engineer $ 1,200 | Technician $ 800 | Survey Team $ 2,000 | Total |
|---|---|---|---|---|---|
| Task 1 Project management | 5 days | | | | $8,000 |
| Task 2 Develop asset inventory | | | | | |
| Records review | 0.5 days | 5 days | 10 days | | $14,800 |
| Pipe inspection reports review | 0.5 days | 5 days | 5 days | | $10,800 |
| Field survey | 0.5 days | 1 day | 15 days | 50 days | $114,000 |
| Build Asset Inventory and GIS Database | 0.5 days | 2 days | 5 days | | $7,200 |
| Task 3 Determine asset criticality score | 0.5 days | 5 days | 1 day | | $7,600 |
| Task 4 Estimate risk of failure and remaining asset life | 0.5 days | 5 days | 5 days | | $10,800 |
| Task 5 Prepare a risk-based repair and replacement schedule | 0.5 days | 3 days | 5 days | | $8,400 |
| Task 6 Prepare asset management plan | 0.5 days | 3 days | 5 days | | $8,400 |
| | $14,400 | $34,800 | $40,800 | $100,000 | $190,000 |

**ECA 2. Morgan Hill Sanitary Sewer System Flow Monitoring Project**

**ECA 2 Project Scope of Work:**

The City will purchase and install Smart Covers at key locations in the sewer collection system. The goal of project is to obtain real time flow and level information and alarms, so operators can respond before SSOs occur. The City will purchase and install three (3) Smart Cover manhole lids at the following locations:

1. Old Monterey and Sanchez Road
2. Main Street and Grand Prix Road
3. Joint Trunk MH JT-75 at Day Road

The locations are known trouble spots or near water bodies. The City will revise its SSMP to include a section for Smart Cover operation, maintenance, and replacement schedule. The work includes the following:

- Installing the Smart Covers;
- Configuring the sensors to the depth of each site;
- Programming alarm and notifications to system operators, and;
- Testing the system.

**Table 3: ECA 2 Project Schedule**

| Task | Completion (Days After Central Coast Water Board Approval) |
|---|---|
| Place Order for Smart Covers | 30 |
| Take Delivery of Smart Covers | 60 |
| Complete Installation of Smart Covers | 70 |
| Perform Testing and Confirm Alarms | 75 |
| System Operational (Close Project) | 80 |

**ECA 2 Project Budget:**

The purchase and installation of three Smart Covers at $6,000 each brings the project budget to $18,000.