

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

STAFF REPORT FOR REGULAR MEETING OF MARCH 5-6, 2020

Prepared on February 21, 2020

ITEM NUMBER: 10

SUBJECT: Stipulated Order Settling Enforcement Actions
Associated with City of Morgan Hill Sanitary Sewer
System Overflows to Llagas Creek (Administrative Civil
Liability Order No. R3-2019-0039)

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KEY INFORMATION

Location: From December 10, 2015 through February 20, 2017, four sanitary sewer system overflows from the City of Morgan Hill occurred at the following locations:

- 14240 Monterey Road,
- Near the intersection of Monterey Road and Ciolino Avenue, and
- 12690 Harding Avenue (location of two overflows)

Type of Discharge: Untreated domestic and municipal wastewater (sewage)
Estimated Volume: Approximately 330,000 gallons from four overflows
Existing Orders: Statewide General Order No. 2006-0003-DWQ

ACTION: Adopt Proposed Stipulated Order

SUMMARY

The City of Morgan Hill (City) owns and operates a sanitary sewer collection system and is required to comply with the State Water Board's General Waste Discharge Requirements for Sanitary Sewer Systems, Order No. 2006-0003-DWQ (Statewide General Order). The Statewide General Order includes a prohibition that prevents the City from discharging untreated or partially treated wastewater to waters of the United States. On four separate occasions, the City discharged untreated domestic and municipal wastewater from its sewer collection system to Llagas Creek. The four separate discharges occurred between December 10, 2015 and February 20, 2017, and

a total of approximately 330,000 gallons of sewage discharged to Llagas Creek. The Central Coast Water Board enforcement team and the City of Morgan Hill entered into confidential settlement discussions to resolve the violations by imposing a penalty against the City in the amount of \$433,366, which exceeds the delegated authority approval limit for the Executive Officer's approval. The enforcement team and the City agreed that the City would pay a portion of their penalties to the State Water Pollution Cleanup and Abatement Account and a portion toward two enhanced compliance action (ECA)¹ projects.

Resolving these discharge violations through inclusion of two ECA projects is expected to improve the City's future operation of their sewer collection system and reduce the potential for future sanitary sewer overflows to Llagas Creek and the community, thereby protecting our water resources and public health. Staff recommends approval of the stipulated order.

DISCUSSION

Background

The enforcement team and the City entered into confidential settlement discussions to resolve the facts surrounding four sanitary sewer overflows that reached Llagas Creek between December 10, 2015 and February 20, 2017. A summary of the unauthorized discharges from the City's sanitary sewer system that reached Llagas Creek, a United States water, are as follows:

- Overflow No. 1: discharge near 14240 Monterey Road on December 10, 2015, for a period of one day totaling 12,000 gallons.
- Overflow No. 2: discharge near Monterey Road and Ciolino Avenue on January 8, 2017, for a period of one day totaling 57,900 gallons.
- Overflow No. 3: discharge near 12690 Harding Avenue on January 8, 2017, for a period of one day totaling 204,000 gallons.
- Overflow No. 4: discharge near 12690 Harding Avenue 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.

Violations of Permit and Assessment of Liability

The City is required to comply with the 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 conveys its untreated domestic and municipal wastewater to the South County Regional Wastewater Authority (SCRWA) wastewater treatment plant for treatment before the treated sewage is authorized to discharge to ground and surface waters via a National Pollutant Discharge Elimination System (NPDES) permit.

¹ 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.

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 City 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 without a NPDES permit.

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.

Following the requirements of the California Water Code and State Water Board Enforcement Policy, the Prosecution Team considered a variety of factors relating to the overflows, including:

- The harm or potential harm of the overflows to the beneficial uses of Llagas Creek;
- The physical, chemical, biological, or thermal characteristics (also referred to as the degree of toxicity) of the wastewater prior to being discharged;
- Whether the overflows could be cleaned up, or whether the effects of the overflows could be stopped (abated);
- The estimated volumes of the overflows;
- The City’s conduct in matters relevant to and preceding the overflows, such as oversight, proper precautions, or negligence that may have caused or contributed to the overflows (also known as culpability);
- The City’s cooperation in returning to compliance;
- The City’s history of violations;
- The City’s ability to pay the recommended liability, and;
- Any economic benefit the City may have realized in relation to the overflows.

From the selected factors described above the enforcement team then followed the Enforcement Policy’s penalty calculation method and determined a recommended administrative civil liability of \$433,366. The final penalty amount includes \$18,012 for staff costs to investigate and resolve the violations through enforcement.

Enhanced Compliance Action Projects

The Water Code and Enforcement Policy allow dischargers to propose supplemental environmental projects (SEP) or enhanced compliance action (ECA) projects in lieu of part of the recommended penalty. 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. The City proposed two ECAs that the enforcement team supports:

1. The Morgan Hill Sanitary Sewer System Asset Management Plan Development and Implementation Project (ECA 1), and
2. The Morgan Hill Sanitary Sewer System Flow Monitoring Project (ECA 2).

These two ECAs are described in Attachment B of the attached proposed stipulated order and meet all Enforcement Policy and SEP Policy requirements. The ECAs are designed to enhance the City's capacity to prevent overflows and comply with waste discharge requirements and the federal Clean Water Act. ECA 1 does this by creating a highly detailed sanitary sewer system asset inventory, scoring those assets based on the consequence of their failure, assessing risk of failure and an asset's remaining lifespan, and preparing a risk-based repair and replacement plan to maximize the City's capability to prevent overflows. ECA 2 enhances the City's ability to prevent overflows by the strategic installation of electronically enhanced manhole covers that will provide the City with advanced warning of increasing sewer system flows so it can respond before overflows occur.

The Enforcement Policy allows for the use of up to 50 percent of the total administrative civil liability for ECAs, excluding the enforcement team's investigative and enforcement costs. For the recommended penalty amount, the amount available to expend on ECAs is \$207,677. Of the recommended penalty amount, ECA 1 is estimated to use \$189,677. ECA 2 is estimated to use \$18,000. The combined total cost for both ECAs is \$207,677. Completion of ECA 1 is scheduled within 18 months of the proposed Order's effective date. Completion of ECA 2 is scheduled within approximately three months of the proposed Order's effective date. The City will pay the remaining liability amount of \$225,689 to the State Water Pollution Cleanup and Abatement Account within 30 days of the proposed Order's effective date

Additional Projects Addressing Inflow and Infiltration

In addition to the City's proposed ECAs, the City had already begun the Morgan Hill Sewer Trunk Line Project to construct a new sewer trunk line parallel to the City's existing trunk line connecting its sanitary sewer system to the SCRWA wastewater treatment plant. This project will therefore also increase the City's ability to avoid overflows due to inflow and infiltration of stormwater. This project's design phase is 90 percent complete as of April 29, 2019. The construction phase of the project is awaiting funding.

The City has also initiated the Infiltration and Inflow Rehabilitation Project to replace and/or repair existing sewer pipe defects at various locations throughout the City to reduce the inflow and infiltration impacts on the sewer system. Both projects are included in the City's current Five-Year Capital Improvement Program covering fiscal years 2018-2019 through 2023-2024.

Compliance History since the Most Recent Violations

Since the City's last major sewer overflow (February 20, 2017), the City's compliance history indicates that no overflows that discharged to surface waters have occurred through December 3, 2019. The City did experience 21 small overflows discharging to land and ranging in estimated volume from one to approximately 2,000 gallons. Those

overflows were reportedly caused by grease deposition, debris, root intrusion, pipe structural problems, and pump station failure. The City also reported one higher volume overflow of approximately 10,200 gallons due to a pipe structural failure. That overflow occurred underground and did not discharge to surface waters. To date, none of the 22 sewer overflow events have been deemed a violation of waste discharge requirements or the Clean Water Act because the overflows did not discharge to surface waters, they did not cause a public nuisance, and they did not result from the City's non-compliance with waste discharge requirements.

Proposed Settlement Agreement

The enforcement team and the City have agreed to settle the matter without administrative or civil litigation and to present the stipulated order included as Attachment 1 to the Central Coast Water Board for adoption as an Order by settlement, pursuant to Government Code section 11415.60. Therefore, adopting the stipulated order thereby becomes a final Administrative Civil Liability Order No. R3-2019-0039, which then initiates the time schedule incorporated in the Order for the City to implement their ECA projects.

Climate Change

The City is improving their sanitary sewer collection system through this enforcement action, which will result in additional protection to the collection system from climate change-related changes in inflow and infiltration from stormwater.

Human Right to Water

California Water Code section 106.3, subdivision (a) states: It is a policy of the State of California "that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation purposes." On January 26, 2017, the Central Coast Water Board adopted Resolution No. R3-2017-0004, which affirms the realization of the human right to water and the protection of human health as the Central Coast Water Board's top priorities. This enforcement action addresses violations and reduces the potential of sanitary sewer overflows in the future. If sewage is not discharged to surface water, it will result in improved water quality, which will protect the municipal and domestic supply (MUN) drinking water beneficial use and improve drinking water quality for those that depend on groundwater as their drinking water source.

Disadvantage Communities

None of the four locations where the sanitary sewer overflows occurred were in a disadvantaged community.

COMMENTS

Enforcement staff publicly noticed the proposed Order from October 24, 2019 through November 24, 2019, and received no comments.

ATTACHMENT

1. Proposed Administrative Civil Liability Order No. R3-2019-0039

RECOMMENDATION

Adopt Administrative Civil Liability Order No. R3-2019-0039

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