

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

ORDER NO. R2-2009-00XX

ORDER SETTING ADMINISTRATIVE CIVIL LIABILITY FOR:

**State of California, Department of Transportation - District 4
Santa Clara County**

This Order is issued in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint No. R2-2008-0064, dated September 19, 2008 (“Complaint”). The parties to this proceeding are the California Regional Water Quality Control Board, San Francisco Bay Region’s (“Regional Water Board’s”) Prosecution Team, and California Department of Transportation (“Discharger”).

The Regional Water Board has been presented with a proposed settlement of the claims alleged in the Complaint (Attachment 1). The proposed settlement represents a mutually agreed-upon resolution of the Prosecution Team’s claims through the payment of an administrative civil liability in the amount of \$150,000 to the State Water Resources Control Board Cleanup and Abatement Account under Complaint No. R2-2008-0064.

The Discharger and the Regional Water Board’s Prosecution Team recommend that the Regional Water Board Executive Officer, pursuant to his delegated authority to issue administrative civil liability orders under Resolution No. R2-2008-0055, issue this Order to effectuate the proposed settlement. Having provided public notice of the proposed settlement and an opportunity for public comment, the Executive Officer finds that:

1. Complaint No. R2-2008-0064 proposes an administrative civil liability of \$248,000 for alleged violations of the Caltrans Statewide Storm Water Permit Order No. 99-06-DWQ, NPDES No. CAS000003 (“Statewide Permit”) and the San Francisco Bay Basin Water Quality Control Plan (“Basin Plan”).
2. During an emergency highway repair, the Discharger, by the actions of its contractor, severed an active sanitary sewer line, resulting in a two-day discharge of approximately 155,000 gallons of raw sewage to the Guadalupe River, a water of the State and United States.
3. One week later, a second waste discharge occurred during this project. While performing soil excavation for the installation of a drainage pipe, a pump that conveyed the groundwater flow through the Baker tanks and filter system failed. This failure caused sediment-laden water to flow into a storm water inlet, which bypassed the best management practices protecting the inlet, and discharge into the storm drain system. The discharge lasted for about 2 hours until the flow was redirected away from the inlet,

discharging approximately 18,000 gallons of sediment-laden water into the storm drain system and ultimately into the Guadalupe River.

4. By discharging 155,000 gallons of raw sewage and 18,000 gallons of sediment-laden water, through the City of San Jose storm drain system to the Guadalupe River, the Discharger violated the terms of its Statewide Permit. Specifically, the discharger has violated Section A. General Discharge Prohibitions 1, 3 and 7 which state in part:
 - Prohibition 1: Any discharge from Caltrans rights-of-way or Caltrans properties, facilities, and activities within those rights-of-way that is not composed entirely of “storm water” to waters of the United States is prohibited unless authorized pursuant to Section B of this NPDES Permit....
 - Prohibition 3: The discharge of waste to waters of the State in a manner causing or threatening to cause a condition of pollution or nuisance defined in CWC section 13050, is prohibited.
 - Prohibition 7: Wastes or wastewater from road sweeping vehicles or from other maintenance or construction activities shall not be discharged to any surface waters or to any storm drain leading to surface water bodies.
5. The Discharger violated Prohibition 15 in Table 4-1 of the Basin Plan, which prohibits the discharge of raw sewage, or any waste failing to meet waste discharge requirements, to any waters of the region. The Discharger discharged 155,000 gallons of raw sewage to the Guadalupe River, a water of the State and United States within the region, in violation of Prohibition 15 of the Basin Plan.
6. The Discharger violated Prohibition 9 in Table 4-1 of the Basin Plan, which prohibits the discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity or discoloration in surface waters or to unreasonably affect or threaten to affect beneficial uses. The Discharger discharged 18,000 gallons of sediment-laden water to the Guadalupe River, resulting in a one-mile plume of turbid water.
7. In sum, the Discharger violated its Statewide Permit and the Basin Plan by discharging 155,000 gallons of raw sewage and 18,000 gallons of sediment-laden water to the Guadalupe River. These are violations of the CWC for which the Board may impose administrative civil liability. Therefore, the Discharger is civilly liable for these violations pursuant to CWC Sections 13385(a)(2) and 13385(a)(4). The authority and process for imposing civil liability are set forth in CWC Section 13323.
8. The Discharger and Regional Water Board’s Prosecution Team, through their respective representatives, have reached a settlement agreement that includes a reduced penalty, contingent upon the Discharger’s commitment to improving their existing project planning procedures, and spill identification and response procedures. The attached Memorandum of Understanding (MOU) outlines the agreed upon goals and required deliverables necessary to ensure that these improvements are implemented.

9. In accepting the proposed settlement, the Executive Officer has considered, where applicable, each of the factors prescribed in Water Code Section 13385(e). The Executive Officer's consideration of these factors, including the revised penalty amount discussed in the Settlement Agreement (Attachment 3), is based upon information and comments provided by the Discharger and the public. In addition to these factors, the administrative civil liability recovers the costs incurred by the staff of the Regional Water Board in evaluating and preparing the Complaint and related documents.
10. The proposed settlement supports the assessment of administrative civil liability in the amount of \$150,000. This Order and assessment of administrative civil liability provides for the full and final resolution of the alleged violation set forth in the Complaint.
11. This Order is an action to enforce the laws and regulations administered by the Regional Water Board. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with Section 15321(a)(2), Title 14, of the California Code of Regulations.

IT IS HEREBY ORDERED that:

1. The Settlement Agreement and MOU are approved;
2. The Discharger shall pay the sums agreed to under the Settlement Agreement in accordance with its terms and fulfill all obligations contained in the MOU;
3. Fulfillment of the Discharger's obligations under the Settlement Agreement and MOU constitutes full and final satisfaction of any and all liability for each claim in the Complaint in accordance with the terms of the Settlement Agreement.

Date: October 28, 2009

Bruce H. Wolfe
Executive Officer

Attachments:

1. Complaint No. R2-2008-0064
2. Memorandum of Understanding, dated XX
3. Settlement Agreement, dated XX