

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

SETTLEMENT AGREEMENT  
AND MUTUAL RELEASE  
FOR  
COMPLAINT NO. R2-2008-0066  
ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF SANITARY SEWER OVERFLOWS  
TOWN OF HILLSBOROUGH  
SAN MATEO COUNTY

This Settlement Agreement for Administrative Civil Liability Complaint No. R2-2008-0066 (this "Agreement") is made and entered into by the Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region, ("Regional Water Board") and the Town of Hillsborough ("Hillsborough") (collectively referred to below as the "Parties") with reference to the following facts:

RECITALS:

- A. On or about September 16, 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R2-2008-0066 (Attachment A). The Complaint alleged that Hillsborough's sanitary sewer system had 71 sanitary sewer overflows (SSOs) between December 1, 2004, and July 8, 2008, from the sanitary sewer collection system operated by Hillsborough. Of the 71 SSOs reported from January 1, 2003, through July 6, 2008, 70 were violations of the Statewide General Waste Discharge Requirements, Order No. 2006-0003 DWQ, adopted by the State Water Resources Control Board on May 2, 2006, or the Water Quality Control Plan for the San Francisco Bay Basin. The Complaint proposed that Hillsborough pay a penalty in the amount of \$750,000.
- B. Hillsborough subsequently provided the Assistant Executive Officer with evidence including that the January 25, 2008, 1.9 million gallon SSO (January 25 spill) was not caused by inadequate sewer system operation and maintenance (such as root blockage or insufficient capacity), but instead by a tree stump that completely blocked a storm drain during a large storm event. The evidence indicated that the SSO incident was caused by a "lake" that formed in a canyon as a result of this blockage and that the lake encompassed five sanitary sewer manholes that were located below the surface of the water. The depth of the water at its peak was approximately 20 feet deep. Water seeped into the manholes causing surcharges from the sewer lines downstream.
- C. The Regional Water Board's Prosecution Team reviewed the evidence submitted by Hillsborough and concluded that the evidence indicates that the January 25<sup>th</sup> spill likely reached waters of the United States in violation of Clean Water Act

section 301, thus it was appropriate to bring an ACL for this spill under Water Code section 13385(a)(5).

The Prosecution Team considered the factors under CWC Section 13385(e) for the January 25 spill. The Prosecution Team and Hillsborough agree that the discharge constitutes a violation of CWC Section 13385; Hillsborough responded quickly to the problem and in order to prevent future occurrences had a custom cage built to prevent large debris from entering the storm drain system at the creek inlet/headwall structure; the economic benefit associated with this incident is considered to be less than \$93,000, the cost for replacing and upgrading the debris rack installed to prevent future problems; Hillsborough's culpability associated with the January 25 spill is low; and the penalty associated with the January 25 spill should be proportionally lower than those for the other SSOs.

- D. Since the time the Compliant was issued, Hillsborough has had 17 small SSOs totaling less than 8,000 gallons and one additional spill report was located from 2007. The penalty amount has been adjusted to include these 18 spills.
- E. The Parties have reached this settlement for the violations alleged in the Complaint. This settlement is subject to public comment as provided below.
- F. The Parties agree that full compliance with this Agreement constitutes settlement of all claims arising out of the alleged violations specified in Complaint No. R2-2008-0066.
- G. The general terms of the settlement are that Hillsborough will pay a total penalty of \$405,000 as follows:
  - a. For the January 25 spill, Hillsborough will pay administrative civil liability of \$120,000 to the State Water Resources Control Board's Cleanup and Abatement Account.
  - b. For the other spills from December 1, 2004 to December 31, 2008, Hillsborough will pay an administrative civil liability of \$60,000 to the State Water Resources Control Board's Waste Discharge Permit Fund.
  - c. In lieu of the remaining \$225,000 penalty, Hillsborough agrees to complete a Supplemental Environmental Project (SEP) at a cost of no less than \$225,000 towards a Private Lateral Inspection and Rehabilitation Program as described in Attachment B, which includes a schedule for implementation. Hillsborough will comply with the specific terms and conditions detailed in Attachment B, which is incorporated into this Agreement. Any information produced from the SEP shall indicate that the SEP is being performed in fulfillment of the settlement of an enforcement action with the Regional Water Board.

- H. As a material condition of this Agreement, Hillsborough represents and warrants that the SEP is not and was not previously contemplated, in whole or in part by Hillsborough for any other purpose except to partially satisfy Hillsborough's obligations in settling the violations alleged in Complaint No. R2-2008-0066. Hillsborough further warrants that its contributions to the project that serves as the SEP would not be made in the absence of this enforcement action.
- I. Subject to the qualifications set forth in paragraph 6 below, the Assistant Executive Officer has the authority to settle this matter in accordance with Water Code Section 13323 and Government Code Section 11415.60. Hillsborough's representative signing this Agreement confirms that he has the authority to bind Hillsborough to the terms of this Agreement.

NOW THEREFORE, in exchange for their mutual promises and for other good and valuable consideration specified in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Both Parties agree to comply with the terms and conditions of this agreement.
2. The Parties agree that they will support, advocate for, and promote the proposed Administrative Civil Liability Order attached as Attachment C. The Parties further agree that they will not contest the proposed Administrative Civil Liability Order attached as Attachment C before the Regional Water Board, the State Water Resources Control Board, or any court.
3. Paragraph 2 does not apply in the event that the Executive Officer or Regional Water Board considers adopting an order that differs in any substantial way from the proposed Administrative Civil Liability Order attached as Attachment C. In that event, the Parties will have full rights to a hearing as set forth in the Notice for this proceeding.
4. The Assistant Executive Officer agrees that this settlement fully resolves the allegations in the Complaint and assesses civil penalties for all violations for the discharges listed in Attachment C, and once the Administrative Civil Liability Order in Attachment C is approved, will not pursue any further administrative or judicial action of any kind against Hillsborough for those discharges. However, Hillsborough understands that the Regional Water Board will be issuing a Cease and Desist Order (CDO) that will address and correct the causes of the SSOs in the collections systems for Hillsborough, Crystal Springs County Sanitation District, and the City of San Mateo. The Regional Water Board also maintains the ability to initiate other administrative or judicial enforcement actions against Hillsborough for violations of the CDO or for future spills.
5. Hillsborough agrees to pay an administrative civil liability of \$120,000 to the Cleanup and Abatement Account and \$60,000 to the Waste Discharge Permit Fund not later than 30 days following approval by the Regional Water Board or

its Executive Officer of the settlement described in this Agreement together with the Order attached as Attachment C. That time period shall be extended during the time in which any review is sought by any third party under Water Code Sections 13320 or 13330. Hillsborough agrees to undertake an SEP for not less than \$225,000 and will comply with the specific terms and conditions set forth in Attachment B.

6. In the event that any of the following occur, Hillsborough agrees to immediately pay an administrative civil liability amount of \$225,000 to the Waste Discharge Permit Fund:
  - a. Hillsborough determines that it does not wish to perform the SEP,
  - b. The Executive Officer determines that the SEP is being not performed in accordance with the specified terms and conditions, including the time schedule detailed in Attachment B, or
  - c. The Executive Officer determines that the proposed SEP does not qualify as a SEP in accordance with the State Water Resources Control Board's Enforcement Policy and another acceptable SEP proposal is not proposed to and approved by the Regional Water Board or the Executive Officer in a reasonable time frame.

Additionally, in the event that the SEP is completed, but expenditures were less than \$225,000, Hillsborough shall immediately pay the remaining balance to the Waste Discharge Permit Fund.

7. The Parties understand that this settlement and the proposed Administrative Civil Liability Order attached as Attachment C must be noticed for a 30-day public review period. In the event that objections are raised during the public comment period for the proposed Administrative Civil Liability Order, the Regional Water Board or the Board's Executive Officer may, under certain circumstances, require a public hearing regarding the proposed Administrative Civil Liability Order. In that event, the Parties agree to meet and confer in advance of the public hearing concerning such objections, and may agree to revise or adjust the Agreement as necessary or advisable under the circumstances.
8. In the event that this Agreement does not take effect because the Executive Officer and/or the Regional Water Board does not approve the attached Administrative Civil Liabilities Order, or the Order is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course

of settlement discussions, except this Agreement, will not be admissible as evidence in the hearing.

9. The Parties agree that in the event that the Regional Water Board does not approve a settlement of this matter, they waive any and all objections related to their attempt to settle this matter, including but not limited to objections related to prejudice or bias of any of the Regional Water Board members or their advisors. In that event they further agree to waive any objections that are premised in whole or in part on the fact that the Regional Water Board members and their advisors were exposed to some of the material facts and the Parties' settlement positions and, therefore, may have formed impressions or conclusions prior to scheduling an evidentiary hearing on the merits of the Administrative Civil Liability Complaint.
10. The Parties intend that this Agreement reflects adequate procedures to be used for the approval of the settlement by the Parties and review by the public. In the event that objections to the procedures are raised during the public comment period for the proposed Administrative Civil Liability Order, the Parties agree to meet and confer concerning any such objections and agree to revise or adjust the procedure as necessary or advisable under the circumstances.
11. Performance of paragraph 5 (and if applicable, paragraph 6) shall effect a mutual release and discharge of the Parties and their respective assigns, agents, attorneys, employees, officers and representatives from any and all claims, demands, actions, causes of action, obligations, damages, penalties, liabilities, debts, losses interests, costs, or expenses of whatever nature, character, or descriptions that they may have or claim to have against one another by reason of any matter or omission arising from any cause whatsoever relating to the proposed Administrative Civil Liability Order, the Complaint, or the sanitary sewer overflows alleged in the Complaint.
12. This Agreement shall not be construed against the Party preparing it, but shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
13. This Agreement shall not be modified by either of the Parties by oral representation made before or after its execution. All modifications to the Agreement must be made in writing and signed by both Parties.
14. Each Party to this Agreement shall bear its own attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
15. If any part of this Agreement is ultimately determined not to be enforceable, the entire Agreement shall become null and void.

16. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.
17. This Agreement may be executed as duplicate originals, each of which shall be deemed an original Agreement, and all of which shall constitute one Agreement. Facsimile or electronic signatures are acceptable.
18. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers on the dates set forth, and this Agreement is effective as of the most recent date signed.

California Regional Water Quality Control Board  
San Francisco Bay Region

By: Dyan C. Whyte 2009.01.20  
12:12:47 -08'00'

Dyan C. Whyte, Assistant Executive Officer

Date:

Town of Hillsborough

By: Christine Krolik

Christine Krolik, Mayor

Date: 1/20/09

APPROVED AS TO FORM:

By: Dorothy Dickey

Dorothy Dickey  
Counsel for Regional Water Board

By: Melissa A. Thorne

Melissa A. Thorne, Downey Brand LLP  
Special Counsel for Hillsborough

ATTACHMENT A

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2008-0066

ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF  
SANITARY SEWER OVERFLOWS  
TOWN OF HILLSBOROUGH  
SAN MATEO COUNTY

This Complaint is issued to Town of Hillsborough (hereinafter “Discharger”) to assess administrative civil liability pursuant to California Water Code (“CWC”) Section 13350 and Section 13323. The Complaint addresses discharges of untreated wastewater resulting from sanitary sewer overflows (SSOs). The Discharger violated the Water Quality Control Plan for the San Francisco Bay Basin and the State Water Resources Control Board Order No. 2006-0003 DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems. Violations cited herein occurred during the period December 1, 2004, through July 6, 2008.

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

1. The Discharger is alleged to have violated provisions of law for which the Regional Water Board may impose civil liability pursuant to CWC Section 13350 and Section 13323. This Complaint proposes to assess **\$750,000** in penalties for the violations cited based on the considerations described in this Complaint. The deadline for comments on this Complaint is **October 16, 2008, 5 p.m.**
2. The Discharger owns and operates a sanitary sewer collection system (collection system) consisting of approximately 116 miles of gravity sanitary sewer lines, 1.1 miles of forced mains, and 4 pump stations. The collection system serves an approximate population of 11,000 consisting of predominately single family residential units with several commercial and public customers. Wastewater from areas south of Black Mountain Road and West Santa Inez Avenue flows through the City of San Mateo’s collection system to the City of San Mateo’s wastewater treatment plant (WWTP). Wastewater from the area north of Black Mountain Road and West Santa Inez Avenue flows through the City of Burlingame’s collection system to the City of Burlingame’s WWTP. In addition, the Discharger’s collection system that connects to the City of San Mateo’s WWTP receives sewage from the Crystal Springs County Sanitation District.
3. This Complaint is issued to address 71 SSOs of untreated sewage from the Discharger’s collection system from December 1, 2004, through July 6, 2008.
4. Unless waived, the Regional Water Board will hold a hearing on this Complaint at its November 12, 2008, meeting, at the Elihu M. Harris State Building, First Floor Auditorium,



1515 Clay Street, Oakland. The Discharger or its representative will have an opportunity to be heard and contest the allegations in this Complaint and the imposition of the civil liability. An agenda for the meeting will be mailed to the Discharger not less than 10 days before the hearing date. The deadline to submit all written comments and evidence concerning this Complaint is specified in Finding 1. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed civil liability, to refer the matter to the Attorney General for recovery of judicial liability, or take other enforcement actions.

5. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by (a) paying the civil liability in full or (b) undertaking an approved supplemental environmental project in an amount not to exceed \$375,000 and paying the remainder of the civil liability, all in accordance with the procedures and limitations set forth in the attached waiver.

### **ALLEGATIONS**

1. From December 1, 2004, through July 8, 2008, the Discharger reported 71 SSOs from its collection system. Notably, 53 of the 71 SSOs, representing nearly 3,000,000 gallons of raw sewage, discharged to surface waters and were not recovered. The attached Tables 1A and 1B summarize the details of all 71 SSOs.
2. An SSO is a discharge from a collection system of raw sewage consisting of domestic, industrial, and commercial wastewater. An SSO contains high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants. An SSO causes a public nuisance when untreated wastewater is discharged to areas with public exposure, such as streets or surface waters used for drinking, fishing, or body contact recreation. An SSO that discharges to land and is not fully cleaned up or contained, discharges to surface waters and/or seeps to ground waters. SSOs pollute surface or ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters.

### **REQUIREMENTS APPLICABLE TO THE DISCHARGER**

1. The Discharger's collection system is regulated by Statewide General Waste Discharge Requirements, Order No. 2006-0003 DWQ, which was adopted by the State Water Resources Control Board (or State Water Board) on May 2, 2006. As owner of a collection system, the Discharger is required to comply with the requirements of Order No. 2006-0003 DWQ (or General WDR). The Discharger filed a Notice of Intent for coverage under the General WDR on June 26, 2006. The effective date of the General WDR is November 2, 2006.
2. Order No. 2006-0003 DWQ includes the following prohibitions:

#### ***C. PROHIBITIONS***

1. *Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.*
2. *Any SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance as defined in CWC Section 13050(m) is prohibited.*
3. The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes programs of implementation to achieve water quality objectives. The Basin Plan was duly adopted by the Regional Water Board and approved by the State Water Board, Office of Administrative Law, and the U.S. EPA, where required.
4. The Basin Plan at Discharge Prohibition 15 in Table 4-1 states the following:  
  
*It shall be prohibited to discharge raw sewage or any waste failing to meet waste discharge requirements to any waters of the Basin.*

#### **WATER CODE PROVISIONS RELEVANT TO THESE DISCHARGES**

1. Pursuant to CWC Section 13350(a)(2), a discharger is subject to civil liability for violating any waste discharge requirements, or prohibition issued by the Regional Water Board. The Regional Water Board may impose civil liability administratively pursuant to CWC, Chapter 5, Article 2.5 (commencing at Section 13323) either on a daily basis or on a per gallon basis, but not both, as follows:
  - a. The civil liability on a daily basis may not exceed \$5,000 for each day in which a violation occurred.
  - b. The civil liability on a per gallon basis may not exceed \$10 for each gallon of waste discharged.

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

#### **VIOLATIONS**

Of the 71 SSOs reported, 70 are violations of either the General WDR Prohibition C.2 or the Basin Plan Discharge Prohibition 15. In general, the violations are as follows:

- SSOs, or any portion of an SSO, that reach groundwater or surface waters of the Basin violate the Basin Plan discharge prohibition.
- All SSOs, regardless of ultimate destination, that occur after the effective date of the General WDR, is a violation of the General WDR.

Specifically, of the 70 SSOs, 47 occurred after the effective date of the General WDR, and thus violated the General WDR.

The 23 SSOs that occurred before the effective date of the General WDR, are violations of the Basin Plan, which prohibits the discharge of raw sewage to groundwater or surface waters of the Basin. Of these 23 SSOs, 6 discharged via storm drains to creeks, which are surface waters of the Basin; 2 discharged to “street/curb or gutter” which eventually washes into surface waters; and the remaining 15 reached groundwater because they discharged to “yard/land” so a portion of each would have seeped through the soil to groundwater.

### **MAXIMUM LIABILITY**

The maximum administrative civil liability the Regional Water Board may impose for the violations is \$29,718,100. See Tables 1A and 1B for calculations [CWC Section 13350(e)].

### **CONSIDERATION OF FACTORS UNDER 13327**

1. In determining the amount of civil liability to be assessed against the Discharger, the Regional Water Board has taken into consideration the factors described in CWC Section 13327. The factors described include

- The nature, circumstances, extent, and gravity of the violation or violations,
- Whether the discharge is susceptible to cleanup or abatement,
- The degree of toxicity of the discharge,
- With respect to the discharger, the ability to pay and the effect on ability to continue in business,
- Any voluntary cleanup efforts undertaken,
- Any prior history of violations,
- The degree of culpability,
- The economic benefit or savings, if any, resulting from the violation, and
- Other such matters as justice may require.

2. **The nature, circumstances, extent, and gravity of the violation or violations**

There were 70 SSOs that total approximately 3,000,000 gallons. The two most common causes of the Discharger’s SSOs are root blockages and insufficient capacity.

In general, the gravity of SSOs is high. Sanitary sewer overflows are discharges of raw untreated sewage, so they are a nuisance and adversely affect public health. Of the 70 SSOs, 55 reached surface waters. The combined volume of about 3,000,000 gallons of raw sewage is significant. These SSOs are especially grave because they reached surface waters and adversely impacted water contact recreation and aquatic life. The other SSOs, particularly those that were low in volume, are less significant because only a portion of each would have reached groundwater or surface waters and thus would have minimal adverse toxicity impact.

3. **Whether the discharge is susceptible to cleanup or abatement**

Insufficient capacity wet weather related SSOs may not be amenable to cleanup or containment because the storm drains and creeks are also flowing full at the time. However, for non-capacity related SSOs, either all or a portion of the SSO, can be contained and returned to the sanitary sewer for treatment. The Discharger recovered a very small percentage of these SSOs (less than 2 percent, by volume).

#### **4. The degree of toxicity of the discharge**

The degree of toxicity of SSOs cannot be accurately quantified. However, raw sewage, as compared to properly treated wastewater, typically has about ten times the concentrations of biochemical oxygen demand, trash, total suspended solids, oil and grease, ammonia, and thousands of times the levels of viruses and bacteria (measured in terms of total and fecal coliform). These pollutants exert varying levels of impact on water quality, and, as such, will adversely affect beneficial uses of receiving waters to different extents. Some possible adverse effects on water quality and beneficial uses as a result of SSOs include:

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

Since storm related SSOs are diluted with storm water, they would not pose the same level of toxicity or impact as an equal volume of raw sewage during non-storm conditions. However, any large SSOs (>5,000 gallons) that occurred during dry weather are very significant because they are full strength and received no dilution. The Discharger reported one such SSO of 20,000 gallons due to root blockage on April 14, 2007. No portion of this SSO was recovered.

#### **5. The ability to pay and the effect on ability to continue in business**

The Discharger had an annual operating budget of approximately \$7.5 Million for fiscal year 2007/2008. The Discharger has authority to adjust its rate scale to provide for financial needs, and has not provided any information indicating that it would be unable to pay or continue in business.

#### **6. Any voluntary cleanup efforts undertaken**

Of the total 3,009,188 gallons of sewage spilled, the Discharger recovered 1,175 gallons. Approximately 3 million gallons were not recovered.

#### **7. Any prior history of violations**

The Regional Water Board's records regarding the discharger's history of violations prior to the timeframe for this Complaint are not complete or accurate; however, it is likely that the Discharger has had prior SSOs.

## 8. The degree of culpability

The Discharger is culpable for the violations because it is responsible for the proper operation and maintenance of its collection system. As noted earlier, the two most common causes of the Discharger's SSOs are root blockages and insufficient capacity. Both of these causes can be prevented with system upgrades and more aggressive sewer system management and maintenance practices.

**Root blockages.** The primary cause of the Discharger's SSOs is root blockages. Though the Discharger does have a program that targets root blockage hot spots, and the program contains elements of a good root control program, this program needs to be improved because root blockage SSOs continue to occur.

**Insufficient capacity.** The second most common cause of the Discharger's SSOs is insufficient capacity especially during wet weather. Of the Discharger's 71 SSOs, insufficient collection system capacity caused 22 (or 31%).

This poor performance was demonstrated in January 2008 when 17 of the Discharger's 22 capacity-related SSOs occurred during heavy storm events (on January 4<sup>th</sup>, 5<sup>th</sup>, and 25<sup>th</sup>). Furthermore, 14 of those 17 SSOs occurred from manholes (on Crystal Springs Road and El Cerrito Avenue) along the Crystal Springs/El Cerrito Trunk Sewer (Trunk Sewer). This Trunk Sewer conveys sewage to the City of San Mateo's collection system. The large percentage of capacity-related SSOs reflects the Discharger's collection system's inability to properly convey sewage flows during large storm events. It also reflects a higher than acceptable inflow and infiltration rate into the Discharger's collection system.

In terms of collection system capacity, in 1997, the Discharger identified the Trunk Sewer as having insufficient capacity to convey peak wet weather flows. Subsequently, the Discharger replaced approximately 4,400 feet of the 15,800 linear feet of the Trunk Sewer thereby increasing its capacity. The Discharger lined an additional 4,500 feet of the Trunk Sewer to prevent inflow and infiltration and leaks. However, the Discharger determined that approximately 11,400 linear feet of the Trunk Sewer, measured from the City of San Mateo's city limit and going upstream, is still undersized to handle peak weather flows.

The Discharger secured funding in 2006 and was prepared to proceed with the remaining Trunk Sewer capacity expansion, but decided to wait until the City of San Mateo addresses downstream capacity issues. These include the City of San Mateo's downstream section of the trunk line and WWTP, which would not be able to handle the increased sewage flow if the Discharger's Trunk Sewer is upgraded. In other words, if the Discharger had proceeded, instead of capacity-related SSOs occurring from the Discharger's collection system, more SSOs would likely have started occurring from the City of San Mateo's collection system.

In terms of excessive inflow and infiltration, the Discharger's ratio of wet weather flow to dry weather flow, a measure of inflow and infiltration, varies from 5:1 to 10:1. A more reasonable ratio for a well maintained collection system is between 3:1 and 4:1. One of the main reasons for the Discharger's high wet to dry weather flow ratio is leaky private sewer laterals.

Currently, the Discharger requires inspection of private sewer laterals at the time of property sale. If the inspection identifies leaks in the lateral, the Discharger requests, but does not require, the property owner to repair of the private sewer lateral prior to property transfer. Moreover, properties do not sell frequently within the Town of Hillsborough. Therefore, locating and correcting all defective sewer laterals within the Town of Hillsborough will take many years if only based on inspections at time of sale. The Discharger can implement a more aggressive private lateral testing and repair program to effectively address its infiltration and inflow problem.

#### **9. The economic benefit or savings**

The Discharger has taken steps over the years to identify and implement upgrades, but these measures have not been fully successful in eliminating capacity related SSOs. To fully eliminate capacity related SSOs for a system of this size is extremely complex and would cost hundreds of millions of dollars since treatment upgrades may be necessary. These are costs the Discharger will have to bear itself and with surrounding communities, when all the projects are identified. The cost savings from not completing these as yet unknown projects for the many years in which SSOs have been occurring could be in the tens to hundreds of millions of dollars. This is a high value relative to the Discharger's current annual budget. It is also a highly uncertain estimate because not all the projects necessary are known, and cannot be known for sometime. Because of this high uncertainty, and because the Discharger has taken some steps over the years to address the problem, this factor bears less weight in the consideration of the amount of liability proposed relative to the other factors.

In terms of the root blockage related SSOs, the Regional Water Board does not have evidence of an economic benefit or savings. The Discharger's preventative maintenance includes a root control program that is comparable with other Bay Area collection systems. And while a more aggressive program is needed to reduce and prevent root blockage SSOs, such a program may be accomplished with the Discharger's existing program resource commitments.

#### **10. Other such matters as justice may require**

The Regional Water Board's Resolution No. R2-2005-0059 declares support of local programs that inspect and rehabilitate private sewer laterals. The Resolution also states that the Regional Water Board would consider the existence of such programs, especially those experiencing significant infiltration and inflow from private sewer laterals, as an important factor when considering enforcement actions for sanitary sewer overflows.

Currently, the Discharger requires inspection of private sewer laterals at the time of property sale, but does not require repair of faulty private sewer lateral. Programs in a few other Bay Area communities are more effective than the Discharger's. Those programs include a testing requirement with any major building modification, and also require (not just request) repair or replacement of faulty laterals.

### **CEQA EXEMPTION**

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

September 16, 2008

Date

Dyan C. Whyte  
Assistant Executive Officer

Attachments: Waiver of Hearing  
Tables 1A and 1B: Town of Hillsborough SSOs

## WAIVER

If you waive your right to a hearing, the matter will be included on the agenda of a Water Board meeting but there will be no hearing on the matter, unless a) the Water Board staff receives significant public comment during the comment period, or b) the Water Board determines it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Water Board holds a hearing under either of the above circumstances, you will have a right to testify at the hearing notwithstanding your waiver. **Your waiver is due no later than October 16, 2008, 5 p.m.**

- Waiver of the right to a hearing and agreement to make payment in full.  
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in this Complaint and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Assistant Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability.
- Waiver of right to a hearing and agree to make payment and undertake an SEP.  
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in this Complaint, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to the amount identified in this Complaint and paying the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the Water Board meeting for which this matter is placed on the agenda. The SEP proposal shall be submitted by October 30, 2008. I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Assistant Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Assistant Executive Officer, I agree to pay the suspended penalty amount within 30 days of the date of the letter from the Assistant Executive Officer rejecting the proposed/revised SEP. I also understand that I am giving up my right to argue against the allegations made by the Assistant Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Assistant Executive Officer. I understand failure to adequately complete the approved SEP will require immediate payment of the suspended liability to the CAA.

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Name (print)

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Signature

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Date

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Title/Organization



**ATTACHMENT Table 1A: Town of Hillsborough SSOs (May 2007 through July 6, 2008)**

Town of Hillsborough  
 ACL Complaint No. R2-2008-0066  
 Sanitary Sewer Overflows

Source of Data: State Water Board CIWQS eReporting Program Database Records (From May 2007 to July 2008)

Date	Location	Gallons Discharged	Gallons Recovered	SSO Destination	Cause	Maximum Penalty <sup>1</sup>	
7/6/2008	2235 Ralston Ave	600	250	Storm drain	Blockage - grease	\$6,000	
6/23/2008	775 Bowhill Rd	10	0	Street/curb and gutter	Blockage - grease	\$5,000	
6/9/2008	80 Del Monte Dr	150	75	Storm drain	Blockage - swifter towels	\$5,000	
5/12/2008	601 Hillsborough Blvd	3	0	Unpaved surface	Blockage - roots	\$5,000	
4/14/2008	550 Remillard Drive	20	0	Unpaved surface	Blockage - roots	\$5,000	
3/17/2008	728 El Cerrito	5	0	Other paved surface	Blockage - roots	\$5,000	
3/8/2008	669 Hayne	50	50	Storm drain	Blockage - grease	\$5,000	
3/4/2008	15 Cottonwood	210	0	Unpaved surface	Blockage - swifter towels, clogging mouth of channel	\$5,000	
2/3/2008	750 El Cerrito	18,000	0	Storm drain	Flow exceeded capacity	\$180,000	
2/3/2008	777 El Cerrito	9,600	0	Storm drain	Flow exceeded capacity	\$96,000	
1/25/2008	1200 Hayne	21,000	0	Storm drain	Flow exceeded capacity	\$210,000	
1/25/2008	1600 Floribunda	20,000	0	Storm drain	Flow exceeded capacity	\$200,000	
1/25/2008	750 El Cerrito	33,000	0	Storm drain	Flow exceeded capacity	\$330,000	
1/25/2008	766 El Cerrito	33,000	0	Storm drain	Flow exceeded capacity	\$330,000	
1/25/2008	777 El Cerrito	115,000	0	Storm drain	Flow exceeded capacity	\$1,150,000	
1/25/2008	1020 Crystal Springs	122,000	0	Storm drain	Flow exceeded capacity	\$1,220,000	
1/25/2008	1050 Crystal Springs	122,000	0	Storm drain	Flow exceeded capacity	\$1,220,000	
1/25/2008	2290 Skyfarm	1,923,000	0	Sewer main is submerged from creek inlet being clogged, which has formed a lake.	Creek inlet plugged up causing a lake to form and submerged sewer main by about 15' of water. Main could not handle all the creek water and caused manhole's to back up.	\$19,230,000	
1/5/2008	1050 Crystal Springs	21,000	0	Surface water	Flow exceeded capacity	\$210,000	
1/5/2008	777 El Cerrito	5,250	0	Surface water	Flow exceeded capacity	\$52,500	
1/5/2008	766 El Cerrito	5,250	0	Surface water	Flow exceeded capacity	\$52,500	
1/5/2008	750 El Cerrito	5,250	0	Surface water	Flow exceeded capacity	\$52,500	
1/4/2008	105 Braemar	175	0	Unpaved surface	Blockage - roots	\$5,000	
1/4/2008	766 El Cerrito	2,700	0	Surface water	Flow exceeded capacity	\$27,000	
1/4/2008	777 El Cerrito	13,500	0	Storm drain	Flow exceeded capacity	\$135,000	
1/4/2008	1050 Crystal Springs Rd.	100,000	0	Surface water	Flow exceeded capacity	\$1,000,000	
1/4/2008	1020 Crystal Springs Rd.	100,000	0	Surface water	Flow exceeded capacity	\$1,000,000	
1/4/2008	1600 Floribunda Ave	18,000	0	Storm drain	Flow exceeded capacity	\$180,000	
1/4/2008	750 El Cerrito	2,700	0	Surface water	Flow exceeded capacity	\$27,000	
12/18/2007	750 El Cerrito	750	700	Paved Surface	Blockage - debris	\$7,500	
12/10/2007	40 Shady Lane	420	100	Building or structure	Blockage - roots	\$5,000	
11/28/2007	610 Pullman Dr.	100	0	Storm drain	Blockage - roots	\$5,000	
10/26/2007	2400 Skyfarm	265	0	Unpaved surface	Blockage - roots	\$5,000	
9/18/2007	5 Cottonwood Court	150	0	Unpaved surface	Blockage - grease	\$5,000	
7/22/2007	350 El Portal Rd.	75	0	Other paved surface	Blockage - roots	\$5,000	
6/21/2007	105 Denise Rd.	210	0	Unpaved surface	Blockage - roots	\$5,000	
5/29/2007	2415 Skyfarm Drive	1,500	0	Unpaved surface	Blockage - roots	\$15,000	
5/14/2007	2375 Skyfarm Dr.	960	0	Storm drain	Blockage - cleaning rags	\$9,600	
5/9/2007	40 Bluebell	350	0	Unpaved surface	Blockage - roots	\$5,000	
<b>Total Gallons (5/2/07 - /7/08)</b>		2,696,253	1,175			<b>Total (5/2/07 - 7/7/08)</b>	\$27,015,600
<b>Total Gallons (12/04 - 5/1/07)</b>		312,865	0			<b>Total (12/04 - 5/1/07)</b>	\$2,702,500
<b>Total Gallons</b>		3,009,188	1,175			<b>Total Maximum Penalty</b>	\$29,718,100

Note: (1) The Maximum Penalty for each SSO is determined by the higher of \$5,000 per day per violation or \$10 per gallon of waste discharged.

**ATTACHMENT Table 1B: Town of Hillsborough SSOs (May 2007 through July 6, 2008)**

Town of Hillsborough  
 ACL Complaint No. R2-2008-0066  
 Sanitary Sewer Overflows

**Source of Data: SF Bay Regional Water Quality Control Board - SSO eReporting Program Database Records (from Dec. 1, 2004 to May 2, 2007)**

DATE	LOCATION	GALLONS DISCHARGED	GALLONS RECOVERED	SSO DESTINATION	CAUSE	DESCRIPTION	MAXIMUM PENALTY <sup>1</sup>
12/9/2004	951 Baileyanna Rd.	30	0	STREET/CURB & GUTTER	BLOCKAGE	ROOTS	\$5,000
1/5/2005	750 Endfield	40	0	YARD/LAND	BLOCKAGE	ROOTS	\$5,000
1/10/2005	75 Rowen Tree Court	300	0	YARD/LAND	BLOCKAGE	ROOTS	\$5,000
2/8/2005	145 Stonepine Road	200	0	YARD/LAND	BLOCKAGE	ROOTS	\$5,000
2/15/2005	Crystal Springs Road & Merner Rd.	<b>198000</b>	0	<b>STORM DRAIN</b>	FLOW CAPACITY DEFICIENCY		\$1,980,000
3/7/2005	720 Chateau	<b>750</b>	0	<b>STORM DRAIN</b>	BLOCKAGE	ROOTS	\$7,500
3/30/2005	20 Cinnamon Court	50400	0	YARD/LAND	BLOCKAGE	ROOTS	\$5,000
6/8/2005	1305 Tartan trail	<b>240</b>	0	<b>STORM DRAIN</b>	BLOCKAGE	GREASE	\$5,000
6/14/2005	726 Jacaranda rd.	350	0	YARD/LAND	BLOCKAGE	GREASE	\$5,000
8/2/2005	2335 Oakdale Road	320	320	CAPTURED IN STORM DRAIN	BLOCKAGE	ROOTS	See note 2.
8/5/2005	18 Farm Lane	110	0	YARD/LAND	BLOCKAGE	GREASE	\$5,000
11/16/2005	101 Bay Wood	200	0	YARD/LAND	BLOCKAGE	GREASE	\$5,000
12/22/2005	766 El Cerrito Rd	30000	0	STORM DRAIN	FLOW CAPACITY DEFICIENCY		\$300,000
12/23/2005	5 Mountainwood Ln.	3000	0	STORM DRAIN	BLOCKAGE	VANDALISM	\$30,000
1/20/2006	1015 Macadamia	10	0	STREET/CURB & GUTTER	BLOCKAGE	ROOTS	\$5,000
1/24/2006	Easement of 2289 Forestview.	225	0	YARD/LAND	BLOCKAGE	DEBRIS	\$5,000
3/16/2006	55 Berryessa Way	200	0	STORM DRAIN	BLOCKAGE	ROOTS	\$5,000
5/1/2006	1130 Tartan Trail (easement)	275	0	YARD/LAND	BLOCKAGE	ROOTS	\$5,000
6/26/2006	17 Stonepine Ct.	250	0	YARD/LAND	BLOCKAGE	GREASE	\$5,000
7/6/2006	Easement behind 35 Citrus Crt.	210	0	YARD/LAND	BLOCKAGE	DEBRIS FROM LATERALS	\$5,000
7/7/2006	1110 Hayne Rd.	175	0	STREET/CURB & GUTTER	BLOCKAGE	ROOTS	\$5,000
7/17/2006	1208 Kenilworth	125	0	YARD/LAND	BLOCKAGE	DEBRIS	\$5,000
10/1/2006	1208 Kenilworth	250	0	YARD/LAND	BLOCKAGE	GREASE	\$5,000
10/10/2006	2165 Edge Court	210	0	YARD/LAND	BLOCKAGE	GREASE	\$5,000
11/27/2006	25 Mosswood	150	0	YARD/LAND	BLOCKAGE	ROOTS	\$5,000
1/24/2007	940 Jackling Dr.	150	0	STORM DRAIN	BLOCKAGE	ROOTS	\$5,000
2/26/2007	Across from 2600 Ralston	475	0	STORM DRAIN	BLOCKAGE	MULTIPLE CAUSES	\$5,000
2/26/2007	942 Baileyanna Rd.	90	0	STORM DRAIN	BLOCKAGE	DEBRIS FROM LATERALS	\$5,000
2/26/2007	1600 Floribunda Ave.	6,000	0	STORM DRAIN	INFLOW & INFILTRATION		\$60,000
3/14/2007	736 Jacaranda Circle	300	0	YARD/LAND	BLOCKAGE	DEBRIS	\$5,000
3/25/2007	20 Glengarry Way	150	0	STORM DRAIN	BLOCKAGE	ROOTS	\$5,000
4/14/2007	840 Hillsborough blvd	20,000	0	STORM DRAIN	BLOCKAGE	ROOTS	\$200,000
<b>TOTAL</b>		<b>312,865</b>	<b>0</b>			<b>TOTAL</b>	<b>\$2,702,500</b>

Note (1) The Maximum Penalty for each SSO is determined by the higher of \$5,000 per day per violation or \$10 per gallon of waste discharged.

(2) This SSO is provided for information only. All of this SSO was recovered and returned to the collection system.

## ATTACHMENT B

**Project Name:** Private Lateral Inspection and Replacement Project (PLIRP)

**Location:** Town of Hillsborough

**Name of Contact:** Martha DeBry, Public Works Director  
(650)375-2409  
mdebry@hillsborough.net

**Category:** Pollution Prevention and Reduction and Public Awareness

**General Cost:** \$130,000 free sewer video inspection grant program  
\$ 55,000 replacement grant program  
\$ 29,000 education and outreach program  
\$ 11,000 oversight costs  
**\$225,000 total**

**Duration:** 5 years from approval with provisions for extension for another 5 years if necessary.

## **Background**

In 2005, the Regional Water Board adopted Resolution No. R2-2005-0059 - "In Support of Programs for Inspection and Rehabilitation of Private Sewer Lateral," which officially recognized that sewer laterals in poor condition may cause surcharging of public sewers, overload pump stations and wastewater treatment plants, and potentially pose localized human health and environmental risks. Local programs for inspection and rehabilitation of private laterals represent one means of assuring that laterals are not a source of unreasonable amounts of inflow and infiltration or blockages. The Resolution states that the Regional Water Board supports and encourages local communities and sanitary sewer collection system agencies, especially those experiencing significant infiltration and inflow from private sewer laterals, to have a program that requires inspection and rehabilitation of private sewer laterals.

Wastewater flow is comprised of mostly residential wastewater. The geography of the area lends to high infiltration rates in damaged or deteriorating lines. Flows to the City of Burlingame and City of San Mateo wastewater treatment plants can increase on a scale of 3 to 1 or more. This means that possibly several million gallons per day may enter the system from infiltration or inflow.

## **SEP Requirements**

SEP proposals must conform to the requirements specified by the State Water Resources Control Board in the Water Quality Enforcement Policy (WQEP) and the Regional Water Board's Standard Criteria and Reporting Requirement for SEPs.

Section IX.E of the WQEP states that a SEP(s) must have an appropriate nexus between the alleged violations and the SEP. The proposed SEP should be related both geographically and in violation type. Excessive infiltration and inflow into the collection

system may contribute to sanitary sewer overflows (SSOs) and wet weather sewage discharges at the downstream waste water treatment plants in the City of Burlingame or City of San Mateo. The proposed SEP addresses this problem in the collection system owned and operated by the Town of Hillsborough, which is a satellite agency of both the City of Burlingame and the City of San Mateo.

The Private Lateral Inspection and Reimbursement Program (PLIRP) is designed to reduce the amount of inflow and infiltration (I&I) in the Town of Hillsborough sanitary sewer system. This PLIRP will create incentives to encourage and fund the replacement of privately owned sewer laterals. The Town of Hillsborough service area consists of approximately 116 linear miles of collector lines owned and operated by the Town, and an unknown number of miles of privately-owned laterals that connect to the main collector lines. Studies have shown that as much as 50% of I&I can be attributed to private laterals.

The Town of Hillsborough does not own the lateral lines that connect private properties to the sanitary sewer system, so this SEP will not directly benefit Town of Hillsborough.

This PLIRP fits the categories of pollution prevention and public awareness. In addition to funds directed at replacing, or assisting in the replacement, of private laterals, there will be educational material created and disseminated about the connections between private laterals and the public sewer system, and the problems that arise from defects in either.

The PLIRP will consist of a program to provide free video inspection of laterals and a monetary grant to offset the cost of replacing a sewer lateral from a residential structure to the main. The details of each of these program elements of the PLIRP are described in more detail below.

*Description:*

Up to \$300 per lateral will be provided as a grant to incentivize the video inspection of private laterals. Approximately \$130,000 will be allocated to the program over 4 years starting in 2010. Achieving a goal of 430 laterals (roughly 10% of laterals) will be the goal of the program. The Town, at its own cost will identify a short list of pre-qualified video inspection contractors that will agree to do work at a pre-set price. This will serve two purposes:

- 1) Ensure that the work will be done correctly with a written evaluation identifying defects to accompany the color video inspection, and
- 2) Relieve the homeowners of the burden of finding his/her own contractor.

It will also provide an opportunity for the Town to negotiate pre-set prices for the work, which can be more competitive than market prices because of economies-of-scale. A condition of receiving the grant is that the Town will be provided a copy of the video and evaluation report which will be reviewed by Town staff.

The PLIRP will also offer grants of up to \$500 as an incentive to replace their defective sewer lateral. The program will be administered as a reimbursement after the homeowner has completed the replacement of the lateral, and the Town has inspected the work. A minimum of 110 grants will be provided to homeowners who replace their sewer laterals. Grants will be offered on a limited basis as funds are available. In order to qualify for the grant the entire lateral from house to street must be replaced with a seamless HDPE sewer pipe or burst with an epoxy liner. Reimbursements will not be provided to homeowners who make spot repairs or use vitrified clay, iron, or galvanized steel pipe.

Exceptions: the grants for video inspection and replace of private sewer lateral will be limited only to homeowners who are not otherwise already required by the Town's ordinances to inspect and rehabilitate their laterals.

To maximize the effectiveness of the grant program, the PLIRP will include

- Identification of target areas with high I&I, where recent capital improvements have been completed
- Identify target locations where SSOs have occurred
- Conduct community education and outreach, and

The PLIRP will target areas where recent capital improvements have made publicly-owned mains water tight and less prone to I/I. By rehabilitating laterals in these areas, it is believed I/I can be effectively eliminated. The PLIRP will also target locations near where SSOs have occurred to prevent a reoccurrence of the problem.

The community outreach and education will inform the homeowners about I&I problems, how they can help resolve those issues, the grant programs available, and a list of pre-qualified video inspection contractors with pre-set prices.

The Town has adopted an ordinance requiring inspection, maintenance and replacement of lateral sewer lines at the time sale, time of permit when plumbing improvements are proposed, time of SSOs or when capital improvement projects identify lateral issues. Inspections that reveal defects will prompt the Town to send notices of correction to the resident who will be required to repair or replace his/her lateral.

At its own cost, the Town will administer the grant programs and compile an annual report regarding the length of lateral pipe replaced, conditions found during replacement, and other information as appropriate.

*Education:* As noted previously, the Town will establish a public education program regarding private laterals, problems that can be encountered, routine maintenance and the homeowner's responsibility. At the same time, this program will make the public aware of information through Town's

website posting and individual mailers that Town will be providing grants to inspect/replace lateral lines. Educational informational about the grant programs shall indicate that these programs are being performed in fulfillment of a settlement of an enforcement action with the Regional Water Board.

*Budget/Cost:*

	Outreach	Video Goal	Video cost	Lateral Rehabilitation Goal	Lateral Rehabilitation Cost	Third Party Oversight by SF Estuary Project
2009	\$2,000					3500
2010	\$8,000	83	\$25,000	26	\$13,000	2000
2011	\$7,500	116	\$35,000	28	\$14,000	1000
2012	\$7,500	116	\$35,000	28	\$14,000	1000
2013	\$4,000	116	\$35,000	28	\$14,000	3500
Total	\$29,000	430	\$130,000	110	\$55,000	11,000
					Grand Total	225,000

*Project Timetable and Milestones:*

<u>Task</u>	<u>Timeline</u>
Develop outreach material and strategy for implementation	Within 3 months of project initiation
Complete list of pre-qualified contractors for video inspection of private laterals at pre-fixed prices	Within 5 months of project initiation
Begin video inspections of laterals and grants for replacement of laterals	Within 6 months of project initiation
Complete PLIRP or pay Cleanup and Abatement the balance of unspent SEP funds	Within 5 years of project initiation**

*\*\* This 5-year term may be extended for up to 5 years for a total project term of 10 years if approved by the Regional Water Board's Executive Officer based on a request by the Town of Hillsborough. Additional third party oversight costs will be determined by the Executive Officer for the remainder of the project at that time and shall be not be from original project budget, but shall be in addition to the budget and paid for by the Town of Hillsborough.*

*Reporting:* Progress reporting will be made to the Regional Water Board and the oversight/audit organization identified below on a quarterly basis from the start of the PLIRP for 2 years (a total of eight reports). After two years, progress reports will be made on an annual basis until project completion (for remaining 3 years). Progress reports are due on the first of each calendar quarter; semi-annual reports are due on January 2 of each year.

A final report shall be made to the Regional Water Board and the oversight/audit organization identified below by July 1st 5 years after project initiation. Records of project expenses and improvements shall be maintained by the Town of Hillsborough.

Each progress report shall describe the tasks completed along with their results (i.e., target areas identified, number of laterals videoed, etc.), monies expended for each task since the last report, and progress of compliance with the project timetable and milestones. The final report shall describe the tasks completed, an accounting of funds expended, and describe whether the measures of success detailed below were met, and if not met, identify possible reasons for why they were not met and suggestions for changes to project elements and strategies to guide future efforts by Town or others.

If Town of Hillsborough requests and is granted an extension of the project, a final report for the first 5 years is still due on the date specified above, and the conditions of the extension will specify reporting requirements for the term of the extension.

*Measures of Success:*

The measures of success of this project include the following:

- Video inspections of 430 laterals
- The replacement or rehabilitation of 110 defective private sewer laterals in the Town's service area, which will result in less I/I and less capacity related SSOs
- Mailers of educational material on PLIRP to 100% of homeowners on annual basis.
- Posting of educational material on [www.hillsborough.net](http://www.hillsborough.net) website

*Project Oversight/Audit:*

To ensure completion of commitments and appropriate expenditure of funds, oversight and audit of the project will be conducted by the San Francisco Estuary Project. All reports must be sent to the following:

Carol Thornton  
Contractor to San Francisco Estuary Project  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
(510) 622-2419  
[cThornton@waterboards.ca.gov](mailto:cThornton@waterboards.ca.gov)



ATTACHMENT C

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

**TENTATIVE ORDER**

**ADMINISTRATIVE CIVIL LIABILITY FOR:**

**TOWN OF HILLSBOROUGH  
SAN MATEO COUNTY**

This Order is issued in reference to an adjudicative proceeding initiated by the California Regional Water Quality Control Board, San Francisco Bay Region's ("Regional Water Board's") investigation of sanitary sewer overflows ("SSOs") in the Town of Hillsborough and surrounding areas and the issuance of Administrative Civil Liability Complaint No. R2-2008-0066. The parties to the proceeding are the Regional Water Board's Prosecution Team, and the Town of Hillsborough ("Discharger").

The Regional Water Board has been presented with a proposed settlement of the claims alleged in Complaint No. R2-2008-0066. The proposed settlement is set forth in a Settlement Agreement that represents a mutually agreed-upon resolution of the Prosecution Team's claims through the payment of an administrative civil liability under California Water Code ("CWC") section 13385 in the amount of \$120,000 to the Cleanup and Abatement Account and under CWC section 13350 in the amount of \$285,000 to the Waste Permit Discharge Fund (\$225,000 of which will be suspended provided it is satisfied through completion of a Supplemental Environmental Project ("SEP") as provided in the Settlement Agreement).

Having provided public notice of the proposed settlement and an opportunity for comment, the Regional Water Board finds that:

1. The Discharger owns and operates a satellite sanitary sewer collection system (collection system) consisting of approximately 116 miles of gravity sanitary sewer lines, 1.1 miles of forced mains, and 4 pump stations. The collection system serves an approximate population of 11,000 consisting of predominately single family residential units with several commercial and public customers. Wastewater from areas south of Black Mountain Road and West Santa Inez Avenue flows through the City of San Mateo's collection system for several miles to the City of San Mateo's wastewater treatment plant (WWTP). Wastewater from the area north of Black Mountain Road and West Santa Inez Avenue flows for several miles through the City of Burlingame's collection system to the City of Burlingame's WWTP. In addition, the Discharger's collection system that connects to the City of San Mateo's WWTP receives sewage from the Crystal Springs County Sanitation District.
2. The Discharger also owns and operates a municipal storm sewer system regulated under a National Pollutant Discharge Elimination System ("NPDES") permit,

Regional Water Board Order No. 99-059, which was last amended in 2007. Pursuant to Clean Water Act section 1342(p)(3)(B), this permit requires that the Discharger have ordinances and regulations to effectively prohibit non-stormwater discharges into the storm sewers and programs to reduce the discharge of pollutants to the maximum extent practicable.

3. From January 1, 2003, through January 15, 2009, the Discharger reported 89 sanitary sewer overflows (SSOs) from its collection system. All occurred between December 1, 2004, and January 15, 2009. Notably, 88 of the 89 SSOs, representing approximately 3 million gallons of raw sewage, discharged to storm drains, surface waters, and groundwater and were not recovered. The attached Tables 1A and 1B summarize the details of all 89 SSOs.
4. The Discharger's collection system is regulated by non-NPDES Statewide General Waste Discharge Requirements, Order No. 2006-0003 DWQ, which was adopted by the State Water Resources Control Board ("State Water Board") on May 2, 2006. As owner of a collection system, the Discharger is required to comply with the requirements of Order No. 2006-0003 DWQ ("General SSO WDR"). The Discharger filed a Notice of Intent for coverage under the General SSO WDR on June 26, 2006. The effective date of the General SSO WDR is November 2, 2006.
5. Order No. 2006-0003 DWQ includes the following prohibitions:

#### *C. PROHIBITIONS*

1. *Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.*
2. *Any SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance as defined in CWC Section 13050(m) is prohibited.*
6. The Water Quality Control Plan for the San Francisco Bay Basin ("Basin Plan") is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes programs of implementation to achieve water quality objectives. The Basin Plan was duly adopted by the Regional Water Board and approved by the State Water Board, Office of Administrative Law, and the U.S. EPA, where required.
7. The Basin Plan at Discharge Prohibition 15 in Table 4-1 states the following:

*It shall be prohibited to discharge raw sewage or any waste failing to meet waste discharge requirements to any waters of the Basin.*

8. The Regional Water Board has investigated the potential violations, and of the 89 SSOs reported, 88 are violations of either the General WDR Prohibition C.2 or the Basin Plan Discharge Prohibition 15. In general, the violations are as follows:

All SSOs that cause a nuisance, regardless of ultimate destination, that occur after the effective date of the General WDR are violations of the General WDR. CWC section 13050(m) defines “nuisance” as “anything which meets all of the following requirements: (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. (3) Occurs during, or as a result of, the treatment or disposal of wastes.” Specifically, of the 89 SSOs, 65 occurred after the effective date of the General WDR and constituted a nuisance, and thus violated the General WDR Prohibition C.2.

SSOs, or any portion of an SSO, that reach groundwater or surface waters of the Basin violate the Basin Plan discharge prohibition.

The 23 SSOs that occurred before the effective date of the General WDRs, are violations of the Basin Plan, which prohibits the discharge of raw sewage to groundwater or surface waters of the Basin. Of these 23 SSOs, 6 discharged via storm drains and 2 discharged to “street/curb or gutter” which would likely reach surface waters of the Basin; and the remaining 15 reached groundwater because they discharged to “yard/land” so a portion of each would have seeped through the soil to groundwater.

These 88 SSOs constituted violations of state law under CWC section 13350 for reaching waters of the Basin, but there was no conclusive evidence that all these events reached “waters of the United States,” and thus were not all considered to be violations of Water Code section 13385.

9. Of the 89 SSOs reported, the January 25, 2008 SSO constitutes a violation of California Water Code (CWC) section 13385(a)(5). This event was not caused by inadequate sewer system operation and maintenance (such as root blockage or insufficient capacity), but instead by a tree stump that completely blocked a storm drain and backed up sufficient water to form a lake that inundated five sewer manholes and caused a spill of approximately 1.9 million gallons of diluted sewage to waters of the United States, including the San Francisco Bay. Hillsborough’s culpability associated with this January 25 spill is low; and therefore the penalty associated with the January 25 spill is proportionally lower than those for the other SSOs.
10. In November of 2007, Regional Water Board staff initiated an investigation of SSOs in Hillsborough and the surrounding areas by sending an email to the Discharger requesting information on its sewage collection system and informing it that Regional

Water Board staff was drafting a Cease and Desist Order due to SSOs. The Discharger provided the information requested by the Water Board in a timely manner. On December 10, 2007, the Discharger's Public Works Director, at a publicly noticed meeting, informed its Council that the Regional Water Board was pursuing issuance of a Cease and Desist Order. Additional spills occurred in the winter and early spring of 2008, which required additional investigation and modification of draft enforcement orders.

11. On June 6, 2008, the Regional Water Board received San Francisco Baykeeper's 60-day notice of intent to file a citizen lawsuit against the Discharger. However, the Regional Water Board had already commenced its investigation and enforcement activities, and on September 16, 2008, the Regional Water Board's Assistant Executive Officer issued a tentative Cease and Desist Order and an Administrative Civil Liability Complaint in the amount of \$750,000 for public notice and comment.
12. The Executive Officer has considered the exhibits and information in the record and comments provided by the Parties and the public, including the revised penalty amount discussed in the attached Settlement Agreement, and has determined that the Discharger is subject to civil penalties. In determining the amount of civil liability to be assessed against the Discharger, the Executive Officer has taken into consideration the factors described in CWC Sections 13327 and 13385(e), as applicable.

The Executive Officer finds that the penalty amount agreed to by the Parties is reasonable based on the factors in CWC Sections 13327 and 13385(e).

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

IT IS HEREBY ORDERED that:

1. The Settlement is approved;
2. The Discharger shall pay the sums agreed to under the Settlement Agreement which are:
  - A. The Discharger will pay a total penalty of \$405,000 as follows:
    - a. For the January 25 spill, the Discharger will pay administrative civil liability of \$120,000 to the State Water Resources Control Board's Cleanup and Abatement Account.
    - b. For the other spills from January 1, 2003 to January 15, 2009, the Discharger will pay an administrative civil liability of \$60,000 to the State Water Resources Control Board's Waste Discharge Permit Fund.

- c. In lieu of the remaining \$ 225,000 penalty, the Discharger agrees to complete a Supplemental Environmental Project (SEP) at a cost of no less than \$225,000 towards a Private Lateral Inspection and Rehabilitation Program as described in Attachment X, which includes a schedule for implementation. The Discharger will comply with the specific terms and conditions detailed in Attachment X. Any information produced from the SEP shall indicate that the SEP is being performed in fulfillment of the settlement of an enforcement action with the Regional Water Board.
3. In the event that the Discharger does not complete the SEP, then the Discharger shall pay \$225,000 in accordance with the terms of the Settlement Agreement.
4. Fulfillment of the Discharger's obligations under the Settlement Agreement 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: \_\_\_\_\_

\_\_\_\_\_  
Bruce H. Wolfe  
Executive Officer

Table 1A: Source of Data: State Water Board CIWQS eReporting Program Database Records (From May 2007 to January 2009)

No.	Date	Location	Gallons Discharged	Gallons Recovered	SSO Destination	Cause
1	1/2/2009	405 Remillard	10	0	Other paved surface	Root intrusion
2	12/27/2008	665 Chateau	150	75	Storm drain/catch basin	Blockage – debris
3	12/7/2008	1285 Cardigan	50	50	Captured on paved surface	Root intrusion
4	11/25/2008	1275 Tartan Trail	125	100	Storm drain	Blockage - papers
5	10/19/2008	540 Laurent	150	10	Other paved surface	Blockage – grease
6	10/12/2008	95 Lookout	500	250	Storm drain/ dry creek/contained	Blockage – debris
7	10/11/2008	1020 Parrot	50	50	Storm drain/ catch basin/ captured	Blockage – debris
8	10/9/2008	560 Pullman	450	0	Yard	Blockage – roots
9	10/2/2008	1465 Tartan Trail	30	25	Storm drain	Blockage – roots
10	8/31/2008	575 Laurent	550	0	Storm drain	Blockage – roots/debris
11	8/31/2008	575 Pullman	730	0	Storm drain/ dry creek	Blockage – roots
12	8/30/2008	85 Orange	999	0	Drainage channel/ easement	Blockage – roots
13	8/22/2008	35 Cottonwood	2250	0	Inaccessible easement	Blockage – roots
14	8/18/2008	888 Irwin	150	140	Other paved surface	Blockage - paper
15	8/13/2008	15 Lydia	300	0	Yard	Blockage - roots
16	8/11/2008	325 Hillsborough	200	50	Other paved surface	Blockage - roots
17	8/9/2008	20 Bates	750	0	Yard	Blockage – roots
18	7/6/2008	2235 Ralston Ave	600	250	Storm drain	Blockage - grease
19	6/23/2008	775 Bowhill Rd	10	0	Street/curb and gutter	Blockage - grease
20	6/9/2008	80 Del Monte Dr	150	75	Storm drain	Blockage – swiffer towels
21	5/12/2008	601 Hillsborough Blvd	3	0	Unpaved surface	Blockage – roots
22	4/14/2008	550 Remillard Drive	20	0	Unpaved surface	Blockage – roots
23	3/17/2008	728 El Cerrito	5	0	Other paved surface	Blockage – roots
24	3/8/2008	669 Hayne	50	50	Storm drain	Blockage – grease
25	3/4/2008	15 Cottonwood	210	0	Unpaved surface	Blockage – swiffer towels, clogging mouth of channel
26	2/3/2008	750 El Cerrito	18,000	0	Storm drain	Flow exceeded capacity
27	2/3/2008	777 El Cerrito	9,600	0	Storm drain	Flow exceeded capacity
28	1/25/2008	1200 Hayne	21,000	0	Storm drain	Flow exceeded capacity
29	1/25/2008	1600 Floribunda	20,000	0	Storm drain	Flow exceeded capacity
30	1/25/2008	750 El Cerrito	33,000	0	Storm drain	Flow exceeded capacity
31	1/25/2008	766 El Cerrito	33,000	0	Storm drain	Flow exceeded capacity
32	1/25/2008	777 El Cerrito	115,000	0	Storm drain	Flow exceeded capacity
33	1/25/2008	1020 Crystal Springs	122,000	0	Storm drain	Flow exceeded capacity
34	1/25/2008	1050 Crystal Springs	122,000	0	Storm drain	Flow exceeded capacity
35	1/25/2008	2290 Skyfarm	1,923,000	0	Sewer main is submerged from creek inlet being clogged, which has formed a lake.	Creek inlet plugged up causing a lake to form and submerged sewer main by about 15' of water. Main could not handle all the creek water and caused manhole's to back up.
36	1/5/2008	1050 Crystal Springs	21,000	0	Storm drain	Flow exceeded capacity
37	1/5/2008	777 El Cerrito	5,250	0	Storm drain	Flow exceeded capacity
38	1/5/2008	766 El Cerrito	5,250	0	Storm drain	Flow exceeded capacity
39	1/5/2008	750 El Cerrito	5,250	0	Storm drain	Flow exceeded capacity
40	1/4/2008	105 Braemar	175	0	Unpaved surface	Blockage – roots
41	1/4/2008	766 El Cerrito	2,700	0	Storm drain	Flow exceeded capacity
42	1/4/2008	777 El Cerrito	13,500	0	Storm drain	Flow exceeded capacity
43	1/4/2008	1050 Crystal Springs Rd.	100,000	0	Storm drain	Flow exceeded capacity
44	1/4/2008	1020 Crystal Springs Rd.	100,000	0	Storm drain	Flow exceeded capacity

**ATTACHMENT Table 1A and Table 1B: Town of Hillsborough SSOs (December 2004 through January 15, 2009)**

Town of Hillsborough  
Tentative Order  
Sanitary Sewer Overflows

45	1/4/2008	1600 Floribunda Ave	18,000	0	Storm drain	Flow exceeded capacity
46	1/4/2008	750 El Cerrito	2,700	0	Storm drain	Flow exceeded capacity
47	12/18/2007	750 El Cerrito	750	700	Storm drain	Blockage – debris
48	12/10/2007	40 Shady Lane	420	100	Storm drain	Blockage – roots
49	11/28/2007	610 Pullman Dr.	100	0	Storm drain	Blockage – roots
50	10/26/2007	2400 Skyfarm	265	0	Storm drain	Blockage – roots
51	9/18/2007	5 Cottonwood Court	150	0	Unpaved surface	Blockage – grease
52	8/9/2007	38 Crystal Springs	900	0	Roadway ditch	Blockage – grease
53	7/22/2007	350 El Portal Rd.	75	0	Other paved surface	Blockage – roots
54	6/21/2007	105 Denise Rd.	210	0	Unpaved surface	Blockage – roots
55	5/29/2007	2415 Skyfarm Drive	1,500	0	Unpaved surface	Blockage – roots
56	5/14/2007	2375 Skyfarm Dr.	960	0	Storm drain	Blockage - cleaning rags
57	5/9/2007	40 Bluebell	350	0	Unpaved surface	Blockage – roots
<b>Total Gallons (5/2/07 – 1/15/09)</b>			2,704,597	1,925		
<b>Total Gallons (12/04 - 5/1/07)</b>			312,865	0		
<b>Total Gallons</b>			3,017,462	1,925		



ATTACHMENT Table 1A and Table 1B: Town of Hillsborough SSOs (December 2004 through January 15, 2009)

Town of Hillsborough  
Tentative Order  
Sanitary Sewer Overflows

Table 1B: Source of Data: SF Bay Regional Water Quality Control Board - SSO eReporting Program Database Records (from Dec. 1, 2004 to May 2, 2007)							
NO.	DATE	LOCATION	GALLONS DISCHARGED	GALLONS RECOVERED	SSO DESTINATION	CAUSE	DESCRIPTION
58	12/9/2004	951 Baileyanna Rd.	30	0	STREET/CURB & GUTTER	BLOCKAGE	ROOTS
59	1/5/2005	750 Endfield	40	0	YARD/LAND	BLOCKAGE	ROOTS
60	1/10/2005	75 Rowen Tree Court	300	0	YARD/LAND	BLOCKAGE	ROOTS
61	2/8/2005	145 Stonepine Road	200	0	YARD/LAND	BLOCKAGE	ROOTS
62	2/15/2005	Crystal Springs Road & Merner Rd.	198000	0	STORM DRAIN	FLOW CAPACITY DEFICIENCY	
63	3/7/2005	720 Chateau	750	0	STORM DRAIN	BLOCKAGE	ROOTS
64	3/30/2005	20 Cinnamon Court	50400	0	YARD/LAND	BLOCKAGE	ROOTS
65	6/8/2005	1305 Tartan trail	240	0	STORM DRAIN	BLOCKAGE	GREASE
66	6/14/2005	726 Jacaranda rd.	350	0	YARD/LAND	BLOCKAGE	GREASE
67	8/2/2005	2335 Oakdale Road (1)	320	320	CAPTURED IN STORM DRAIN	BLOCKAGE	ROOTS
68	8/5/2005	18 Farm Lane	110	0	YARD/LAND	BLOCKAGE	GREASE
69	11/16/2005	101 Bay Wood	200	0	YARD/LAND	BLOCKAGE	GREASE
70	12/22/2005	766 El Cerrito Rd	30000	0	STORM DRAIN	FLOW CAPACITY DEFICIENCY	
71	12/23/2005	5 Mountainwood Ln.	3000	0	STORM DRAIN	BLOCKAGE	VANDALISM
72	1/20/2006	1015 Macadamia	10	0	STREET/CURB & GUTTER	BLOCKAGE	ROOTS
73	1/24/2006	Easement of 2289 Forestview.	225	0	YARD/LAND	BLOCKAGE	DEBRIS
74	3/16/2006	55 Berryessa Way	200	0	STORM DRAIN	BLOCKAGE	ROOTS
75	5/1/2006	1130 Tartan Trail (easement)	275	0	YARD/LAND	BLOCKAGE	ROOTS
76	6/26/2006	17 Stonepine Ct.	250	0	YARD/LAND	BLOCKAGE	GREASE
77	7/6/2006	Easement behind 35 Citrus Crt.	210	0	YARD/LAND	BLOCKAGE	DEBRIS FROM LATERALS
78	7/7/2006	1110 Hayne Rd.	175	0	STREET/CURB & GUTTER	BLOCKAGE	ROOTS
79	7/17/2006	1208 Kenilworth	125	0	YARD/LAND	BLOCKAGE	DEBRIS
80	10/1/2006	1208 Kenilworth	250	0	YARD/LAND	BLOCKAGE	GREASE
81	10/10/2006	2165 Edge Court	210	0	YARD/LAND	BLOCKAGE	GREASE
82	11/27/2006	25 Mosswood	150	0	YARD/LAND	BLOCKAGE	ROOTS
83	1/24/2007	940 Jackling Dr.	150	0	STORM DRAIN	BLOCKAGE	ROOTS
84	2/26/2007	Across from 2600 Ralston	475	0	STORM DRAIN	BLOCKAGE	MULTIPLE CAUSES
85	2/26/2007	942 Baileyanna Rd.	90	0	STORM DRAIN	BLOCKAGE	DEBRIS FROM LATERALS
86	2/26/2007	1600 Floribunda Ave.	6,000	0	STORM DRAIN	INFLOW & INFILTRATION	
87	3/14/2007	736 Jacaranda Circle	300	0	YARD/LAND	BLOCKAGE	DEBRIS
88	3/25/2007	20 Glengarry Way	150	0	STORM DRAIN	BLOCKAGE	ROOTS
89	4/14/2007	840 Hillsborough Blvd	20,000	0	STORM DRAIN	BLOCKAGE	ROOTS
<b>TOTAL</b>			<b>312,865</b>	<b>0</b>			

Note (1) This SSO is provided for information only. All of this SSO was recovered and returned to the collection system.