

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 (Attachment 1) 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 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 Regional 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 (Attachment 1), which are:
 - A. The Discharger will pay a total penalty of \$405,000 as follows:
 - a. For the January 25, 2008, 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 2, which includes a schedule for implementation. The Discharger will comply with the specific terms and conditions detailed in Attachment 2. 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

- Attachments:
Table 1A and 1B
1. Settlement Agreement
2. SEP

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 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
Total Gallons (5/2/07 – 1/15/09)			2,704,597	1,925		
Total Gallons (12/04 - 5/1/07)			312,865	0		
Total Gallons			3,017,462	1,925		

ATTACHMENT Table 1A and 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
TOTAL			312,865	0			

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