

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

IN THE MATTER OF:

COMPLAINT NO. R2-2010-0094

HSR, Inc.)	for
530 Aldo Ave)	ADMINISTRATIVE
Santa Clara, CA 95054)	CIVIL LIABILITY
)	
Re: Landfill 8 and Landfill 10)	
Presidio, San Francisco)	

This Administrative Civil Liability Complaint (Complaint) is issued to HSR, Inc. for three alleged discharges at two construction sites at Landfill 8 and Landfill 10 in the Presidio, San Francisco. A penalty of \$118,085 is proposed against HSR, Inc. based on the violations cited and penalty factors discussed in this Complaint.

YOU ARE HEREBY GIVEN NOTICE THAT:

1. HSR, Inc. is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Regional Water Board) may impose civil liability under California Water Code (hereinafter CWC) section 13385.
2. HSR, Inc. is alleged to have violated the following:
 - a) General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ (hereinafter General Permit): Discharge Prohibition A.3; Receiving Water Limitation B.2; Special Provision C.2; and Sections A.5(b)(1) and A.6; and
 - b) Prohibition No. 9 of the San Francisco Bay Basin Water Quality Control Plan (Basin Plan).
3. A hearing concerning this Complaint may be held before the Regional Water Board within ninety (90) days of the date of issuance of this Complaint, unless, pursuant to CWC section 13323, HSR, Inc. waives its right to a hearing. The waiver procedures are specified in the attached Waiver Form. The hearing in this matter is scheduled for the Regional Water Board's regular meeting on October 13, 2010, at the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland. HSR, Inc. 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 you not less than 10 days prior to the hearing date.
4. If a hearing is held on this matter, the Regional Water Board will consider whether to affirm, reject, or modify the proposed civil liability, or refer the matter to the Attorney General for recovery of judicial liability. If the matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability

amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

RESPONSIBLE PARTY

5. HSR. Inc. is a general engineering services contractor with expertise in storm water pollution control who is covered by the General Permit and the Storm Water Prevention Pollution Plan (hereinafter SWPPP) for the Landfill 8 and Landfill 10 construction sites.
 - a) In June 2009, HSR. Inc. signed and certified a “Notice of Intent” to obtain coverage under the General Permit and prepared and certified a SWPPP for the Landfill 8 and Landfill 10 construction sites.
 - b) HSR. Inc. included a certificate of training in the SWPPP for the Landfill 8 and Landfill 10 construction sites from a SWPPP training course offered by Shasta College on May 16, 2008.
 - c) HSR. Inc. is designated as the “SWPPP Manager” for the Landfill 8 and Landfill 10 construction sites. As stated in the SWPPP (Section 300.5), the SWPPP Manager has “primary responsibility and significant authority for the implementation, maintenance, inspection and amendments to the approved SWPPP.” Specific responsibilities listed for the SWPPP Manager position include: ensuring full compliance with the SWPPP and the Permit; conducting pre-storm, storm, and post-storm inspections; and implementing prompt and effective erosion and sediment control measures.
6. HSR. Inc. was contracted by the Presidio Trust to perform SWPPP services at the Landfill 8 and Landfill 10 construction sites. Several representatives of HSR. Inc. were working at the Landfill 8 and Landfill 10 construction sites each day during the week of October 12 through 18, 2009 (“Presidio Weekly Progress Report #19) for the October 13th and 19th, 2009 rain events. Notes in the weekly report show that Presidio Trust authorized work change requests and agreed to pay premium wages for weekend work so that HSR. Inc. could perform SWPPP services.

ALLEGED DISCHARGE – LANDFILL 8 CONSTRUCTION SITE

7. Problems with the Landfill 8 SWPPP were noted during storm events on October 13th and 19th, 2009. According to an “Erosion and Corrective Action” report dated January 26, 2010, surface ponds were present at the site, water was flowing from the surface ponds into the Landfill 8 construction zone, and erosion gullies formed within fill material placed during construction activities. Erosion that occurred during the rain events violated Section A.5(b)(1) and Section A.6 of the General Permit:
 - a) “...Runoff from off-site areas should be prevented from flowing through areas that have been disturbed by construction unless appropriate conveyance systems are in place...” [General Permit, A.5(b)(1)]
 - b) “At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season...” [General Permit, Section A.6]

8. HSR. Inc. took corrective measures to address SWPPP issues at the Landfill 8 construction site, which included constructing three surface impoundments to retain storm water running on to the site and to prevent further erosion of the fill material. The surface impounds were constructed within the Landfill 8 construction zone over boundaries of the underlying landfill.
 - a) Corrective action did not prevent off-site runoff from entering the construction zone and did not address the violation of Section A.5(b)(1) of the General Permit (Allegation 7).
 - b) The construction of surface impoundments over a landfill violates Chapter 15, section 2546(f) of the CWC.

“Cover materials shall be graded to divert precipitation from the waste management unit, to prevent ponding of surface water over wastes, and to resist erosion as a result of precipitation with the return frequency specified in Table 4.1 of this article.”
9. Regional Water Board staff were not notified about problems with the Landfill 8 SWPPP or consulted about the corrective actions taken to address surface ponding and erosion at the construction site.
10. A storm water discharge occurred at the site during a rain event on January 18, 2010 after surface impoundments constructed over Landfill 8 failed. Failure of the surface impoundments released a large volume of water, which caused a massive sediment discharge at the landfill site. Storm water and sediment (in the range of 900 to 1500 cubic yards of material) were discharged from the Landfill 8 construction site leaving an erosion channel within the cover material approximately 600 feet in length, up to 60 feet wide, and up to 12 feet deep.
11. Sediment-laden storm water discharged from the Landfill 8 construction site on January 18, 2010 to Presidio Buildings 1809 and 1910 and to the storm drain system along Wyman Avenue. As shown in the January 26, 2010 Erosion and Corrective Action Plan, the discharge crossed Wyman Avenue and may have impacted receptors further downgradient (the storm drain system for Park Presidio and Mountain Lake). Sediment deposition around Presidio Buildings 1809 and discharges to the storm drain system for Wyman Avenue caused a nuisance condition and caused or threatened to cause pollution in violation of Discharge Prohibition A.3 of the General Permit:

“Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.”

ALLEGED DISCHARGES – LANDFILL 10 CONSTRUCTION SITE

12. HSR. Inc. failed to implement an adequate SWPPP at the Landfill 10 construction site during rain events on October 13 and 19, 2009. Inadequate implementation of Best Management Practices (hereinafter BMPs) under the SWPPP did not control and abate storm water discharges from the site resulting in violations of Section A.6 and Special Provision C.2 of the General Permit.

a) Rain events on October 13th and 19th were significant (2.49 inches on October 13th and between 0.63 and 0.74 inches over a 15- to 20-minute period on October 19th) and were predicted in weather forecasts with sufficient time to reinforce erosion and sediment controls as needed.

b) The intent of SWPPPs for construction sites is to have adequate protection from storm water discharges for all seasons. As stated in the General Permit Fact Sheet:

“The requirements of the General Permit are intended to be implemented on a year-round basis, not just during the part of the year when there is a high probability of a precipitation event which results in storm water runoff. The permit should be implemented at the appropriate level and in a proactive manner during all seasons while construction is ongoing.”

c) HSR. Inc. violated General Permit Section A.6 and Special Provision C.2 by not having adequate BMPs for source (erosion) control and sediment retention to prevent sediment-laden discharges from the site on October 13 and 19, 2009. Photographs taken of the Landfill 10 construction site on October 12, 2009 show no erosion controls and limited sediment retention measures to control storm water discharges from a 2.4-acre area graded to a 1.75:1 (30 degree) slope.

- Under Section A.6 of the General Permit:

“At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season...”

- Under Special Provision C.2 of the General Permit:

“All Dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The Discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the Best Available Technology/Best Conventional Technology performance standard.”

13. An estimated 41,827 gallons of sediment-laden storm water discharged from the construction site due to failure of BMPs at Landfill 10 during the October 13 and 19, 2009 rain events, This estimate is based on storm water discharging from a 1.75:1 (30 degree) graded slope of approximately 2.4 acres. The estimate does not consider gallons of sediment-laden storm water which also discharged along the perimeter and top of the sloped area.

14. Sediment-laden storm water was discharged from the Landfill 10 construction site to storm drains, protected environmental habitat, and a source of drinking water in violation of the General Permit (Discharge Prohibition A.3 and Receiving Water Limitation B.1). This also is a violation of Prohibition No. 9 of the Basin Plan

a) Sediment-laden discharges overwhelmed sediment retention measures installed adjacent to 15th Avenue and discharged to storm drains along this roadway in violation of Discharge Prohibition A.3:

“Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.”

- b) Sedimentation associated with the discharges impacted environmental habitats at the base of the graded slope and along the creek and riparian corridor of Lobos Creek. Habitat for protected fauna (*Lessingia germanorum*) was impacted at the base of the slope. The extent of impacts to this and other habitats along Lobos Creek is being evaluated by the Presidio Trust.
- c) Turbidity in Lobos Creek was significantly elevated due to sediment releases from Landfill 10 during the October 13th and 19th rain events requiring a water treatment plant to cease operation from October 13 through 23, 2009. The water treatment plant uses water from Lobos Creek as a source of drinking water. This beneficial use impact violates Receiving Water Limitation B.1 of the General Permit and also violates Prohibition No. 9 of the Basin Plan.

- Receiving Water Limitation B.2

“The Storm Water Pollution Prevention Plan (SWPPP) “developed for the construction activity covered by this General Permit shall be designed and implemented such that storm water discharges and authorized nonstorm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable Regional Water Board’s Basin Plan.”

- The following discharge is prohibited under the Basin Plan (Prohibition 9):

“Silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface water or to unreasonably affect or threaten to affect beneficial uses.”

- 15. Regional Water Board staff inspected the Landfill 10 construction site on October 22 and November 4, 2009 and issued a Notice of Violation to HSR, Inc. and the property owner (the Presidio Trust) on November 12, 2009. This document cited BMP failures, SWPPP inadequacies, and unauthorized discharge of sediment to Lobos Creek.

PROPOSED CIVIL LIABILITY

- 16. Pursuant to CWC Section 13385(c)(1) and (c)(2), the Regional Water Board can administratively assess a liability of \$10,000 for each day in which a violation occurs, and \$10 per gallon for volume discharges that are not cleaned-up and exceed 1,000 gallons. The maximum civil liability that may be imposed for violations cited in this Complaint is \$438,270.
 - a) The maximum civil liability for one day of discharge from the Landfill 8 construction site is \$10,000. Gallons of discharge were not considered for this maximum penalty determination because of cleanup of the sediment discharge by Presidio Trust and HSR, Inc.
 - b) The maximum civil liability for 2 days (\$20,000) and 40,827 gallons (\$408,270) of discharge from the Landfill 10 construction site is \$428,270.

17. The Regional Water Board's Prosecution Team recommends imposing civil liability on HSR. Inc. in the amount of \$118,085 for the alleged discharges from the Landfill 8 and Landfill 10 construction sites. In determining the amount of civil liability to be assessed against HSR. Inc., the Regional Water Board must take into consideration the factors described in CWC section 13385(e) as discussed in the Water Quality Enforcement Policy¹. These factors are discussed in the "Administrative Civil Liability Assessment" attached to this Complaint.

CEQA EXEMPTION

18. This action is an enforcement action and is, therefore, exempt for the California Environmental Quality Act (CEQA), pursuant to Title 14, California Code of Regulations, Section 15321.

Thomas Mumley
Assistant Executive Officer

July 15, 2010
Date

Attachments: Waiver Form
 Administrative Civil Liability Assessment

¹ On November 17, 2009, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2009-00 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in CWC section 13385(e). The policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf