CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

In the matter of:	)	
	)	
CITY OF PACIFICA	)	**Order No. R2-2011-0022**
	)	
No. R2-2009-0075 for	)	
Administrative Civil Liability	)	**Settlement Agreement and Stipulation**
Complaint No. R2-2009-0076	)	**for Entry of Order; Order**

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulation") is entered into by and between the San Francisco Bay Regional Water Quality Control Board ("Regional Water Board") Prosecution staff ("Prosecution Team"), and City of Pacifica ("Discharger") (collectively the "Parties") and is presented to the Regional Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60 (the "Order"). This Stipulation and the Order are in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint No. R2-2009-0075, dated October 23, 2009 (the "Complaint") (Attachment A).

Section II: RECITALS

1. The Discharger is the owner and operator of a domestic wastewater treatment plant called the Calera Creek Water Recycling Plant ("WWTP") located at 700 Coast Highway, Pacifica, San Mateo County. The WWTP and associated wastewater collection system operates under WDR Order No. R2-2006-0067 (NPDES Permit No. CA0038776) and was previously subject to WDR Order No. 99-006 from September 15, 1999, until October 31, 2006, as amended by WDR Order No. R2-2002-0088 on September 18, 2002. The collection system is also subject to State Water Resources Control Board ("State Water Board") Order No. 2006-0003.

2. The Complaint recommends imposing an administrative civil liability totaling $2,300,000 for alleged sanitary sewer overflows and bypass violations during the period of December 27, 2004, to June 23, 2009, including substantial discharges in January 2008, and effluent and receiving water limit violations during the period of February 3, 2006, to September 30, 2008 (collectively, "Alleged ACL Violations"). The proposed civil liability includes staff costs of $60,000.

3. Subsequent to the issuance of the Complaint, the Prosecution Team determined that the Discharger had reported an additional seven effluent and receiving water limit violations that are not otherwise included in the Complaint. These additional alleged violations are detailed in Table 1, Attachment B ("Alleged Additional Violations"). Prosecution Team staff has reviewed these violations and after consideration of the statutory factors required by Water Code section 13385(e) recommends imposition of $12,000 in mandatory minimum penalties for the Alleged Additional Violations.

4. On June 26, 2010, the Assistant Executive Officer of the Regional Water Board issued a Tentative Cease and Desist Order (Tentative CDO) to the Discharger requiring certain actions to reduce and eliminate sanitary sewer overflows from its sanitary sewer collection system. The deadline for public comment on the Tentative CDO was July 28, 2010.

5. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Staff believes that the resolution of the Alleged ACL Violations and Alleged Additional Violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the Alleged ACL Violations and Alleged Additional Violations except as provided in this Stipulation and that this Stipulation is in the best interest of the public.

6. To resolve by consent and without further administrative proceedings the Alleged ACL Violations and Alleged Additional Violations, the Parties have agreed to the imposition of $1,700,000 in liability against the Discharger. Discharger shall pay a total of $880,000 to the State Water Resources Control Board Cleanup and Abatement Account, consisting of $808,000 in stipulated civil penalties, $60,000 of which is for staff costs, and $72,000 in mandatory minimum penalties. The remaining $820,000 in liability shall be suspended conditioned upon completion of the Supplemental Environmental Project(s) ("SEP(s)") as set forth in this Stipulation. Discharger shall expend at a minimum $820,000 to complete the SEP(s).

Section III: STIPULATIONS

The Parties stipulate to the following:

7. Administrative Civil Liability: The Discharger hereby agrees to the imposition of an administrative civil liability totaling $1,700,000 as set forth in Paragraph 6 of Section II herein. Within thirty (30) days of issuance of the Order, the Discharger agrees to pay a total of $880,000 to the State Water Resources Control Board Cleanup and Abatement Account. Further, the Parties agree that $820,000 of this administrative civil liability shall be suspended ("Suspended Liability") pending completion of one of the following SEP options:

a. completion of: (1) the Private Sewer Lateral Grant Program SEP as set forth in Paragraphs 8 through 19 of Section III herein and Attachment C attached hereto and incorporated by reference ($650,000); and (2) the Rockaway Creek Restoration SEP as set forth in Paragraphs 8 through 19 of Section III herein and Attachment D attached hereto and incorporated by reference ($170,000) ("SEP Option A"); or

b. completion of a more extensive Private Sewer Lateral Grant Program SEP as set for in Paragraphs 8 through 19 of Section III herein and Attachment E ($820,000) ("SEP Option B"). SEP Option A and SEP Option B are referred to collectively as SEP Options.

MAW 4/20/11 DAW 4/21/11

Within ~~90~~270 days of adoption of this Order, Discharger shall inform the Regional Water Board contact provided below in writing which of the above SEP Options it will complete ("SEP Selection Deadline"). The intent of this provision is to give the Discharger additional time to determine if it can obtain authorization from the necessary property owner(s) to complete the Rockaway Creek SEP.

MAW 4/20/11 DAW 4/21/11

8. **SEP Descriptions:** The Parties agree that this Stipulation includes the performance of the one of the two SEP Options described below:

a. **SEP Option A**

i. **Private Sewer Lateral Grant Program SEP:** The goal of this project is to reduce inflow and infiltration (I/I) into the Discharger's collection system from defective private sewer laterals. A reduction in I/I will benefit surface water quality and beneficial uses by decreasing the number and volume of spills of untreated or partially treated sewage from the Discharger's collection system to surface waters during wet weather. In addition, the program will reduce the number and volume of spills to surface waters from private laterals. Detailed plans concerning how the Discharger will implement the Private Sewer Lateral Grant Program SEP, as well as, an implementation Schedule, Milestone Dates and budget are provided in the SEP proposal included herein as Attachment C.

ii. **Rockaway Creek SEP:** The goal of this project is to improve water quality by reducing erosion and sediment loading to the Rockaway Beach neighborhood of Pacifica by installing a bioswale to receive and treat runoff from a portion of the Rockaway Beach access parking area, removing nuisance invasive plants, and establishing native vegetation along Rockaway Creek which flows into the Pacific Ocean. More detailed plans concerning the Rockaway Creek SEP including a schedule, Milestone Dates and budget are proved in the SEP proposal included herein as Attachment D.

iii. **SEP Completion Dates:** Under SEP Option A, the Private Sewer Lateral Grant Program SEP shall be concluded, and a final report shall be provided to the Regional Water Board by January 20, 2015 ("Private Sewer Lateral Grant Program SEP Completion Date"). The Rockaway Creek SEP shall be implemented in accordance with the schedule and milestone dates provided in the SEP proposal included as Attachment D with the final project report being completed by November 30, 2013 or November 30, 2014, if an additional year is needed for plant species to become established as discussed in more detail in the SEP proposal included as Attachment D ("Rockaway Creek SEP Completion Dates"). The Private Sewer Lateral Grant Program SEP Completion Date and the Rockaway Creek SEP Completion Dates are collectively referred to as the "SEP Option A Completion Dates."

b. SEP Option B

i. **Extensive Private Sewer Lateral Grant Program SEP:** The goal of this project is to direct the entire Suspended Liability amount to private sewer lateral replacement projects in order to reduce inflow and infiltration (I/I) into the Discharger's collection system from defective private sewer laterals. As discussed in greater detail above under SEP Option A, replacement of defective private laterals will benefit surface water quality and beneficial uses, and reduce the number and volume of spills to surface waters. Detailed plans concerning how the Discharger will implement the Extensive Private Sewer Lateral Grant Program SEP, as well as, an implementation Schedule, Milestone Dates and budget are provided in the SEP proposal included herein as Attachment E.

ii. **SEP Completion Dates:** Under SEP Option B, the Extensive Private Sewer Lateral Grant Program SEP shall be concluded, and a final report shall be provided to the Regional Water Board by January 1, 2016 ("SEP Option B Completion Date".) The SEP Option A Completion Dates and SEP Option B Completion Date are referred to collectively as the "SEP Completion Date(s)".

9. Selection of SEP Option is Final: As required by paragraph 7, Discharger must select one of the above SEP Options by the SEP Selection Deadline. Once a SEP Option is selected, that selection is final. If at some point in time beyond the SEP Selection Deadline the Discharger is unable to complete a project within a SEP Option, then the terms and conditions in paragraph 16 and 17 below apply and are binding on the Discharger.

10. Agreement of Discharger to Fund, Report and Guarantee Implementation of SEP(s): The Discharger represents that: (1) it will fund the SEP(s) in the amount as

described in this Stipulation; (2) it will provide certifications and written reports to the Regional Water Board consistent with the terms of this Stipulation detailing the implementation of the SEP(s); and (3) Discharger will guarantee implementation of the selected SEP Option as identified in Attachments C and D, or E (as applicable) by remaining liable for the Suspended Liability until the SEP(s) are completed and accepted by the Regional Water Board in accordance with the terms of this Stipulation. The Discharger agrees that the Regional Water Board has the right to require an audit of the funds expended by it to implement the SEP(s).

11. Oversight of SEP(s): Discharger agrees to contract with the San Francisco Estuary Partnership to oversee the implementation of the SEP(s). The Discharger is solely responsible for paying for all oversight costs incurred by the San Francisco Estuary Partnership to oversee the SEP(s). The SEP(s) oversight costs are in addition to the total administrative civil liability imposed against the Discharger and are not credited toward the Discharger's obligation to fund the SEP(s). Oversight tasks to be performed by the San Francisco Estuary Partnership include but are not limited to, updating CIWQS, reviewing and evaluating progress, reviewing the final completion report, verifying completion of the project with a site inspection, auditing appropriate expenditure of funds, and providing updates to Regional Water Board staff.

12. SEP Progress Reports: The Discharger shall provide quarterly reports of progress to a Designated Regional Water Board Representative, and the State Water Resources Control Board's Division of Financial Assistance, commencing 90 days after this Stipulation becomes final and continuing through submittal of the final reports described below in Paragraph 13. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted.

13. Certification of Completion of SEP(s) and Final Reports: On or before the applicable SEP Completion Date, the Discharger shall submit a certified statement of completion of the SEP(s) ("Certification of Completion"). The Certification of Completion shall be submitted under penalty of perjury, to the Designated Regional Water Board Representative and the State Water Resources Control Board's Division of Financial Assistance, by a responsible corporate official representing the Discharger. The Certification of Completion shall include following:

a. Certification that the SEP(s) have been completed in accordance with the terms of this Stipulation. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the SEP(s) and the costs incurred by the Discharger.

b. Certification documenting the expenditures by the Discharger during the completion period for the SEP(s). Expenditures may be external payments to outside vendors or contractors performing the SEP. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as

environmental and information technology contractors or consultants. The certification need not address any costs incurred by the Regional Water Board for oversight. The Discharger shall provide any additional information requested by the Regional Water Board staff which is reasonably necessary to verify SEP expenditures.

c. Certification, under penalty of perjury, that the Discharger followed all applicable environmental laws and regulations in the implementation of the SEP including but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act. To ensure compliance with CEQA where necessary, the Discharger shall provide the Regional Water Board with the following documents from the lead agency prior to commencing SEP construction:

i. Categorical or statutory exemptions relied upon;

ii. Negative Declaration if there are no potentially "significant" impacts;

iii. Mitigated Negative Declaration if there are potentially "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potentially significant impacts; or

iv. Environmental Impact Report (EIR)

14. Third Party Financial Audit: In addition to the certification, upon completion of the SEP(s) and at the written request of the Regional Water Board staff, the Discharger, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff, or its designated representative, providing such party's(ies') professional opinion that the Discharger and/or an implementing party (where applicable) have expended money in the amounts claimed by the Discharger. The audit report shall be provided to the Regional Water Board staff within three (3) months of notice from Regional Water Board staff to the Discharger of the need for an independent third party financial audit. The audit need not address any costs incurred by the Regional Water Board for oversight.

15. Regional Water Board Acceptance of Completed SEP(s): Upon the Discharger's satisfaction of its SEP obligations under this Stipulation and completion of the SEP(s) and any audit requested by the Regional Water Board, Regional Water Board staff shall send the Discharger a letter recognizing satisfactory completion of its SEP obligations under this Stipulation. This letter shall terminate any further SEP obligations of the Discharger and result in the permanent stay of the Suspended Liability.

16. Failure to Expend all Suspended Administrative Civil Liability Funds on the Approved SEP(s): In the event that Discharger is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that the entire Suspended Liability has been spent to complete the components of the SEP(s) for which the

Discharger is financially responsible, Discharger shall pay the difference between the Suspended Liability and the amount the Discharger can demonstrate was actually spent on the SEP(s), as an administrative civil liability. The Discharger shall pay the additional administrative liability within 30 days of its receipt of notice of the Regional Water Board's determination that the Discharger has failed to demonstrate that the entire Suspended Liability has been spent to complete the SEP components.

17. Failure to Complete the SEP(s): If the SEP(s) are not fully implemented within the SEP Completion Dates (as defined in Paragraph 8) required by this Stipulation, the Designated Regional Water Board Representative shall issue a Notice of Violation. As a consequence, the Discharger shall be liable to pay the entire Suspended Liability or, some portion thereof less the value of the completion of any milestone requirements. Unless otherwise ordered, the Discharger shall not be entitled to any credit, offset, or reimbursement from the Regional Water Board for expenditures made on the SEP(s) prior to the date of receipt of the Notice of Violation. The amount of the Suspended Liability owed shall be determined via a "Motion for Payment of Suspended Liability" before the Regional Water Board, or its delegee. Upon a determination by the Regional Water Board, or its delegee, of the amount of the Suspended Liability assessed, the amount shall be paid to the State Water Board Cleanup and Abatement Account within thirty (30) days after the service of the Regional Water Board's determination. In addition, the Discharger shall be liable for the Regional Water Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the assessed amount will satisfy the Discharger's obligations to implement the SEP(s).

18. Publicity: Should the Discharger or its agents or subcontractors publicize one or more elements of the SEP(s), they shall state in a **prominent manner** that the project is being partially funded as part of the settlement of an enforcement action by the Regional Water Board against the Discharger.

19. Compliance with Applicable Laws: The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulation and the Order or compliance with the terms of this Stipulation and the Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability.

20. Party Contacts for Communications related to Stipulation/Order:

For the Regional Water Board:

Lila Tang
Chief NPDES Wastewater Division
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
LTang@waterboards.ca.gov

For the Discharger:

Cecilia Quick
City Attorney
City of Pacifica
170 Santa Maria Avenue
Pacifica, CA 94044
Phone: 650-738-7409
Fax: 650-359-8947
quickc@ci.pacifica.ca.us

21. Attorney's Fees and Costs: Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

22. Matters Addressed by Stipulation: Upon the Regional Water Board's adoption of the Order incorporating the terms of this Stipulation, this Stipulation represents a final and binding resolution and settlement of the Alleged ACL Violations, the Additional Violations and all claims, violations or causes of action that could have been asserted against the Discharger as of the date of this Stipulation based on the specific facts alleged in the Complaint or this Stipulation ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability and the Discharger's full satisfaction of the SEP obligations described herein.

23. Public Notice: The Discharger understands that this Stipulation and the Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board. In the event objections are raised during the public comment period for this Stipulation and the Order, the Regional Water Board or the Executive Officer may, under certain circumstances, require a public hearing regarding this Stipulation and the Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust this Stipulation as necessary or advisable under the circumstances.

24. Addressing Objections Raised During Public Comment Period: The Parties agree that the procedure contemplated for the Regional Water Board's adoption of the Order incorporating the terms of this Stipulation and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such

objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

25. No Waiver of Right To Enforce: The failure of the Prosecution Staff or Regional Water Board to enforce any provision of this Stipulation and Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulation and Order. The failure of the Prosecution Staff or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.

26. Interpretation: This Stipulation shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is represented by counsel in this matter.

27. Modification: This Stipulation shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board.

28. If Order Does Not Take Effect: In the event that this Stipulation does not take effect because the Order incorporating the terms of this Stipulation it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water 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 will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or

b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

29. No Admission of Liability: In settling this matter, the Discharger does not admit to any of the findings in the Complaint, or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance; however, the Discharger agrees that in the event of any future enforcement actions by the Regional Water Board,

the Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327.

30. Waiver of Hearing: The Discharger has been informed of the rights provided by CWC section 13323 (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

31. Waiver of Right to Petition: The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order as written for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

32. Waiver of Right to Contest the Revised Tentative CDO: The Discharger agrees to the terms and conditions contained in the Revised Tentative CDO attached hereto as Attachment F and waives the following rights: (1) to object to the adoption of the Revised Tentative CDO by the Regional Water Board; (2) to petition the Regional Water Board's adoption of the Revised Tentative CDO as written for review by the State Water Resources Control Board; and (3) to appeal the same to a California Superior Court and/or any California appellate level court.

33. Covenant Not to Sue: The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.

34. Regional Water Board is Not Liable: Neither the Regional Water Board members nor the Regional Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Discharger (or an implementing party where applicable) its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation, nor shall the Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation.

35. Authority to Bind: Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

36. No Third Party Beneficiaries. This Stipulation is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulation for any cause whatsoever.

37. Effective Date: This Stipulation shall be effective and binding on the Parties upon the date the Regional Water Board enters the Order incorporating the terms of this Stipulation.

38. Counterpart Signatures: This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
San Francisco Bay Region

By: _____
Dyan C. Whyte, Assistant Executive Officer

Date: 3/14/11

City of Pacifica

By: _____
NAME:

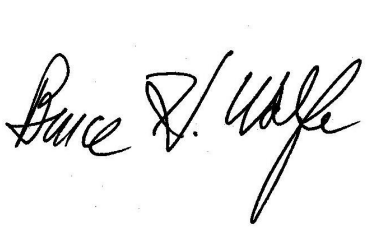
Date: 3/14/11

Order of the Regional Water Board

39. In adopting this Stipulated Order, the Regional Water Board or its delegee has considered, where applicable, each of the factors prescribed in CWC sections 13327, 13351 and 13385(e). The consideration of these factors is based upon information and comments obtained by the Regional Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board or its delegee by the Parties and members of the public. In addition to these factors, this settlement recovers the costs incurred by the staff of the Regional Water Board for this matter and recovers the economic benefit derived from the acts that constitute the violations, in accordance with Water Code section 13385(e).

40. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

Pursuant to CWC section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California San Francisco Bay Regional Water Quality Control Board.



Bruce H. Wolfe
Executive Officer

Date: _____

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN FRANCISCO BAY REGION

IN THE MATTER OF:	)	
	)	
CITY OF PACIFICA	)	COMPLAINT NO. R2-2009-0075
170 Santa Maria Ave.	)	FOR
Pacifica, San Mateo County	)	ADMINISTRATIVE CIVIL LIABILITY
California	)	October 23, 2009
	)	

THE CITY OF PACIFICA IS GIVEN NOTICE THAT:

1. The City of Pacifica (Discharger) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), may impose civil liability under Sections 13350 and 13385 of the California Water Code (Water Code).

2. Discharger operates a domestic wastewater treatment plant called the Calera Creek Water Recycling Plant (WWTP) located at 700 Coast Highway, Pacifica, San Mateo County. The WWTP and associated wastewater collection system operates under Order No. R2-2006-0067 (NPDES No. CA0038776) and was previously subject to WDR Order No. 99-066 from September 15, 1999, until October 31, 2006, as amended by Order No. R2-2002-0088 on September 18, 2002. The collection system is also subject to State Water Resources Control Board (State Water Board) Order No. 2006-0003. This Complaint is issued to address alleged violations of the Water Code associated with numerous sanitary sewer overflows and bypass violations reported by Discharger, including substantial discharges in January 2008, as well as effluent and receiving water limit violations for the period of February 2006 through September 2008.

3. Unless waived, a hearing on this complaint will be held before the Regional Water Board on January 13, 2010, at 1515 Clay Street in the Auditorium, Oakland, California. You or your representative will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of the civil liability. An agenda for the meeting will be provided to you not less than 10 days before the hearing date. The deadline to submit all evidence or comments concerning this complaint is November 23, 2009.

ALLEGATIONS

1. The WWTP serves a population of approximately 39,000, with 82 miles of gravity sewers and 4.2 miles of force mains. There are five sewage pump stations with a total pumping capacity of 34,000 gallons per minute (49 mgd).

2. Treated wastewater is discharged from the WWTP to Calera Creek which flows through Calera Creek Wetlands into the Pacific Ocean at Rockaway Beach. A bicycle trail follows Calera Creek from the WWTP discharge to Rockaway Beach, and the area is extensively used for recreation. Although the Basin Plan does not specifically identify beneficial uses for Calera Creek and Calera Creek Wetlands, based on characteristics of these water bodies the beneficial uses for inland streams and marine wetlands that are applicable to Calera Creek and its wetlands are as follows. The beneficial uses of Calera Creek are: agricultural supply; cold freshwater habitat; freshwater replenishment; groundwater recharge; industrial service supply; fish migration; industrial process supply; water contact recreation; non-contact water recreation; fish spawning; warm freshwater habitat; and wildlife habitat. The beneficial uses of Calera Creek Wetlands are: ocean, commercial and sports fishing; fish migration; water contact recreation; non-contact water recreation; shellfish harvesting; fish spawning; wildlife habitat; preservation of rare and endangered species; and navigation. The beneficial uses of the Pacific Ocean are the same as for the Calera Creek Wetlands in addition to industrial service supply.

3. As more fully described below, during the month of January 2008, significant discharges occurred at the WWTP and from its collection system that constitute violations of the Water Code and the Discharger's NPDES Permit. On January 25, 2008, more than 100,000 gallons of raw sewage was discharged from various points in the WWTP collection system. On January 25 and 26, 2008, the Discharger bypassed approximately 6,900,000 gallons of partially treated sewage to surface waters. These spills are collectively referred to as the "Discharge Events." In addition to the Discharge Events, this complaint also addresses numerous smaller collection system spills reported by the Discharger and one larger spill in 2004 from a pump station that are detailed in Table A.

4. The Discharge Events occurred as a result of the Discharger's failure to adequately identify and address collection system problems. Specifically, the Discharger could have undertaken detection and elimination of excessive collection system inflow and infiltration ("I&I"). I&I corrective measures could have avoided: (1) the collection system surcharging and the resultant spills; and (2) the WWTP process bypass. The Discharger constructed additional WWTP capacity to address excessive collection system I&I but that additional capacity was not sufficient to transport and treat the peak flows from the January 2008 storm events. Failure to complete correction and repair of the No. 2 sequencing batch reactor prior to the January 25, 2008 storm, also contributed to the treatment system bypasses.

5. The Discharge Events were preventable. Specifically, the Discharger should have undertaken detection and elimination of excessive collection system I&I. There is a long history of I&I problems with the Discharger's collection system and the Discharger had notice of those problems. Historical documents show that the Discharger has been warned of the need to correct the I&I and properly maintain and fund the treatment and collection systems. In a March 26, 1993 letter to the City Manager, Mr. Ron Blair (State Water Board's Revenue Program Specialist) made findings, after reviewing the Discharger's wastewater treatment facilities and financial records, which included the following:

> 1. The operation and maintenance of the grant funded facilities is deficient....Additional staff and resources must be allocated to plant operation and maintenance (including replacement) or O. M. & R.
> 2. At least three audits of City finances indicate that operational expenses exceed operational income. The City is required by 40 CFR 929-2(b)(2) to generate sufficient revenue (from user charges) to pay the total O. M. & R costs.

In addition, Mr. Blair's Audit report dated March 24, 1993, states, "The plant as designed and constructed has operational problems. The problems were compounded by high I/I flows. A lot of the current problems could be reduced or eliminated if the City eliminated the high I/I."

6. The Discharger's knowledge of the collection system's I&I problems is reflected in the fact that the excessive I&I was taken into consideration when designing the relatively new WWTP. Construction of the WWTP facility was completed in September 2000. The WWTP consist of grit removal, sequencing batch reactors, filtration and ultraviolet light disinfection. While the treatment plant was sized to accommodate additional flows from excessive I&I, the capability of the collection system was not expanded to transport excess flows. There is no evidence that the collection system has been evaluated for its carrying capacity or hydraulic limitations since 1982.

7. Excessive I&I into the sanitary sewer was the cause of the discharges of untreated sewage from the collection system and bypass of partially treated sewage during the Discharge Events. Failure to identify and eliminate stormwater I&I into the sanitary sewer threatens to cause future discharges of untreated/partially treated sewage into surface waters in violation of the Water Code and Discharger's NPDES Permit.

During the January 25, 2008, storm, the Discharger's collection system was inundated with stormwater I&I resulting in the collection system spills and bypass at the WWTP. Flow rates as high as 24 mgd were measured at the WWTP. The massive increase in collection system flows coincides with the January 25, 2008,

storm event and was observed as an immediate flow increase, which is typical of I&I events.

The Discharger's efforts to identify and eliminate I&I from its collection system have been inadequate. The sources of I&I (building and roof drains, illicitly connected stormwater drainage systems, poorly sealed manholes, leaky pipe joints and cracked, leaking or broken pipes) are most commonly detected by doing a comprehensive sewer system evaluation survey. This may involve smoke testing, TV inspections of sewer lines, in-line flow measurements during dry and wet rainy seasons and visual inspection of manholes. The Discharger conducted such a study in the early 1980's with State and Federal grant assistance but has not done a comprehensive survey since that time. The Discharger's staff stated during an interview with Richard McHenry, Senior Engineer with the State Water Board's Office of Enforcement, on June 10, 2008, that one community in the service area had been smoke tested about ten years ago but that no other smoke testing has been undertaken. This interview also revealed that the Discharger has purchased a truck mounted television system for investigating sources of I&I, but only a total of five miles of sewers had been filmed. Subsequently to this interview, the Discharger submitted information demonstrating that, between June 2006 and January 2008, 28,695 feet (5.5 miles) of collection system had been filmed. Since January 2008 another 36,861 feet (seven miles) has been filmed. Discharger's staff also confirmed that they do not own or have access to flow meters that would allow them to assess systems contributing high flows or I&I. At the time of the Discharge Events, the Discharger employed 6 line staff and 2 managers in their collection system crew. Subsequently, the Discharger has hired two additional employees for the collection system with the stated intent of increasing the use of the television system.

8. JANUARY 25, 2008, RAW SEWAGE OVERFLOWS

a. On Friday, January 25, 2008, during a winter storm, more than 100,000 gallons of raw sewage were discharged to surface waters from various points in the Discharger's collection system.

b. The Discharger estimates that overflow from a manhole at the intersection of Linda Mar Blvd. and Highway One had a flow rate of 75 gallons per minute and took place for approximately 5.5 hours (from 12:30 to 6 pm). The total estimated volume of sewage discharged from this manhole is 25,000 gallons. The estimated flow is conservative because the start time is the time that the Discharger's crew arrived on the scene. The raw sewage entered the storm drainage system and discharged into the Pacific Ocean at the Pacifica State Beach via the Linda Mar Pump Station which is located only 500 hundred feet from the overflowing manhole. Beach closure signs were posted at 1 pm on January 25, 2008, at three locations along Pacifica State Beach. Samples were taken the

following day, January 26, and continued through the 30th of January when the closure signs were removed from Pacifica State Beach after consultation with the County Health Department.

c. The Discharger estimated overflow from a manhole at the intersection of Palmetto Avenue and Shoreview Drive at a flow rate of 75 gallons per minute for a total time of overflow of 10.5 hours (1:30 pm until midnight) resulting in a raw sewage discharge of approximately 47,250 gallons. During the same time period, a manhole on Avalon Drive at Edgemar Ave. overflowed at an approximate flow rate of 50 gallons per minute for a total estimated discharge volume of 31,500 gallons. The estimated total flow for both locations is conservative because the start time is the time that the Discharger's crew arrived on the scene, not the actual time that the overflow began.

The sewage made its way into the storm drainage system via a catch basin a few yards away from both overflowing manholes and then entered the Pacific Ocean at North Sharp Park where beach closure signs were posted at 1 pm on January 25, 2008. Samples were taken the following day, January 26, and continued until January 29th when North Sharp Park Beach was allowed to be reopened after consultation with and approval of the County Health Department.

9. JANUARY 25 AND 26, 2008, WWTP BYPASS

a. Beginning at approximately 5:45 pm on January 25, 2008, through to approximately 1 pm the next afternoon; an estimated 6.9 million gallons of primary and/or secondary treated wastewater bypassed the filtration process, was run through the ultraviolet (UV) disinfection process then discharged to surface waters. The peak hour treatment design of the WWTP is 20 million gallons per day (mgd), although at the time its processing capability was approximately 16 mgd whereas the peak hour flow observed during the January 25 storm event was 24 mgd.

b. Secondary treatment at the WWTP is provided by 5 sequencing batch reactors (SBRs). The SBRs work normally in a 5 mode procedure as follows:

Fill – React (air on) – Settle (air off) – Decant – Idle

Only one SBR can be filled at a time as the computerized system will not allow other operational modes. During the very high flows the computer system was overridden to operate in a fill and decant mode (the react and settling processes were skipped) resulting in discharges of partially treated sewage.

c. One of the 5 SBRs, unit No. 2, had been out of service since October 2007. The unit No. 2 SBR was pulled off line after a mixing pump failed and the blower was turned on. The air from the blower caused the internal piping system to break in numerous places due to the uplifting pressure of the forced air. The SBR was brought back on-line on March 13, 2008, approximately six weeks after the bypass occurred.

d. The WWTP treatment design peak hour flow rate of 20 mgd was reduced by approximately 20% during the time that the unit No. 2 SBR was non-operational. The high recorded flow during the January 2008 event was 24 mgd, which exceeds the peak design flow capacity of the WWTP, even if the SBR had been in working order.

e. The Discharger failed to collect composite samples for all constituents which have effluent limits from the WWTP bypass discharge as required by the WDR Order No. R2-2006-0067 (NPDES Permit No. CA00038776). In fact, the Discharger did not modify its sampling routine in response to the bypass and there was no sampling or observations of the impacts to Calera Creek other than limited routine effluent composite samples.

10. JANUARY 2006 THROUGH DECEMBER 2008 MONTHLY SELF MONITORING REPORT EFFLUENT VIOLATIONS

a. From January 2006 through December 2008, there were 28 effluent limit and three receiving water violations, as detailed in Table B. Out of the 28 effluent limit violations, 20 are subject to mandatory minimum penalties.

b. From August 7, 2006 until August 22, 2006 the Discharger had seven fecal coliform violations. The exact cause of these violations is unknown. Regardless, the violations were ongoing and presented a significant risk to human health and water quality.

PERMIT REQUIREMENTS APPLICABLE TO DISCHARGER

WDR ORDER NO. R2-2006-0067 (NPDES PERMIT NO. CA0038776) contains the following provisions:

Section III – DISCHARGE PROHIBITIONS

A. Discharge of wastewater at a location or in a manner different from that described by this Order is prohibited.

B. The bypass of untreated or partially treated wastewater to waters of the state is prohibited, except as described at 40 CFR

122.41(m)(4) and in A.12 of the Standard Provisions and Reporting Requirements for NPDES Surface Water Discharge Permits, August 1993. (Attachment G).

***

D. Any sanitary sewer overflow that results in a discharge of untreated or partially treated waste water to waters of the United States is prohibited.

Section IV – EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

A. Effluent Limitations – Discharge Point 001
   1. Final effluent Limitations – Discharge Point 001
      a. The discharge of tertiary treated wastewater to Calera Creek shall maintain compliance with the following effluent limitations at Discharge Point 001, with compliance measured at Monitoring Location E-001 as described in the attached Monitoring and Reporting Program (Attachment E).

Parameter	Units	Daily Maximum	Monthly average	Instantaneous maximum
Total Suspended Solids	mg/l	20	10	
Turbidity	NTU			10
Ammonia Nitrogen (NH3-N)				
Dry season (June – Sept.)	mg/l	5	2	
Wet Season (Oct. – May)	mg/l	10	5	
Cyanide	ug/l	7.8	4.5	

***

      c. pH: the pH of discharge shall not exceed 8.5 nor be less than 6.5

Attachment D – FEDERAL STANDARD PROVISIONS

I. STANDARD PROVISIONS – PERMIT COMPLIANCE
D. Proper operation and maintenance
The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related

appurtenances) which are installed or used by the Discharger to achieve compliance...

G. Bypass

1. Definitions
   a. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility[40CFR 122.41(m)(1)(i)(4)].

   ***

3. Prohibition of bypasses - Bypass is prohibited, and the Regional Water Board may take enforcement action against a Discharger for bypass unless
   a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
   b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
   c. The Discharger submitted notice to the Regional Water Board...

Attachment G - SELF-MONITORING PROGRAM, PART A, NPDES PERMITS (Included in the Order No. R2-2006-0067 at VI.B by reference)

Section C. SPECIFICATIONS FOR SAMPLING AND ANALYSES
2. Effluent
h. When any type of bypass occurs, composite samples shall be collected on a daily basis for all constituents at all affected discharge points which have effluent limits for the duration of the bypass.

WDR Order No. R2-2002-0088 (NPDES No. CA0038776), which was in effect from September 18, 2002, until October 31, 2006, states in part:

I.4

a. The geometric mean value of the last five samples for fecal coliform density shall not exceed Most Probable Number (MPN) of fecal coliform bacteria of 20 MPN/100 ml, and
b. The 90th percentile value of the last 10 samples shall not exceed a fecal coliform bacteria level of 400 MPN/100 ml.

WATER CODE PROVISIONS

Section 13350 provides:

(a) Any person who . . . (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, . . . shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

***

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.
(1) The civil liability on a daily basis may not exceed five thousand dollars ($5,000) for each day the violation occurs. . . .
(2) The civil liability on a per gallon basis may not exceed ten dollars ($10) for each gallon of waste discharged.

Section 13376 provides:

The discharge of pollutants or dredged or fill material or the operation of a publicly owned treatment works or other treatment works treating domestic sewage by any person except as authorized by waste discharge requirements . . . is prohibited, except that no waste discharge requirements or permit is required under this chapter if no state or federal permit is required under the Federal Water Pollution Control Act, as amended.

Section 13385 provides:

(a) Any person who violates any of the following shall be liable civilly in accordance with this section:
(1) Section 13375 or 13376.
(2) Any waste discharge requirements or dredge and fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

***

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:
(1) Ten thousand dollars ($10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

***

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account 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, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

***

(h) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars ($3,000) shall be assessed for each serious violation.
(2) For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.
(i) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars ($3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:
(A) Violates a waste discharge requirement effluent limitation.
(B) Fails to file a report pursuant to Section 13260.
(C) Files an incomplete report pursuant to Section 13260.
(D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

VIOLATIONS

1. DISCHARGE EVENTS

   a. The January 25, 2008 discharges of raw sewage from the collection system into surface waters constitute two days of discharge in violation of NPDES Permit Sections III.A (unauthorized location/manner of discharge) and III.D (unauthorized discharge of untreated or partially treated wastewater). As a result, the Discharger violated Water Code section 13376's prohibition against discharge of pollutants. The Regional Water Board may impose civil liability under 13385 of the Water Code for such violations.

   b. The January 25 and 26, 2008, WWTP bypasses constitute violation of NPDES Permit Sections III.A (unauthorized discharge) and III.B (unauthorized bypass), and Attachment G Standard Provisions C.2.h (failure to sample bypass discharge). As a result, the Discharger violated Water Code Section 13376 which prohibits discharges in violation of permit requirements. The Regional Water Board may impose civil liability under 13385 of the Water Code for such violations.

   c. In addition to the Discharge Events discussed above, Discharger reported numerous collection system spills for the period of December 2004 through June 2009 that are detailed in Table A. The Regional Water Board may impose civil liability under Water Code section 13350 for the spills that discharged to waters of the state and Water Code section 13385 for the spills that discharged to waters of the United States.

2. EFFLUENT AND RECEIVING WATER LIMITS

   a. From January 2006 through December 2008 the Discharger has reported that there were 28 effluent limit violations and 3 receiving water limit violations. One of the violations is a serious violation in accordance with Water Code section 13385, subdivision (h). The remaining 19 violations are either serious and chronic or simply chronic violations in accordance with Water Code section 13385, subdivision (i)(1). (See Table B for details on serious and chronic designations.) The Regional Board is required by Water Code section 13385 subdivisions (h) and (i) to assess mandatory minimum penalty of $3,000 for specified serious and chronic effluent limit violations. The Regional Water Board also has discretion to impose additional liability up to $10,000 per day of violations and $10 per gallon for every gallon discharged but not cleaned up in excess of 1,000 gallons. (Water Code section 13385 subd. (c)(1) and (2).)

   b. Included in the above violations are seven fecal coliform violations. The Regional Water Board is proposing additional liability be imposed under

Water Code section 13358 subdivision (c)(1) and (2), as discussed above, for the coliform violations.

MAXIMUM and MINIMUM POTENTIAL LIABILITY

1. DISCHARGE EVENT VIOLATIONS

The maximum administrative civil liability the Regional Water Board may impose for the Discharge Events and numerous other collections system spills as detailed in Table A is $73,498,250. (See Water Code Sections 13350, and 13385(c)(1) and (2).)

2. EFFLUENT AND RECEIVING WATER LIMIT VIOLATONS

The maximum administrative civil liability the Regional Water Board may impose for the 28 effluent and receiving water limit violations reported by the Dischargers' monthly self-monitoring reports for January 2006 through December 2008, not considering liability which may be imposed on a per gallons discharged basis, is $ 2,060,000. (Water Code Section 13385(c)(1) and (2).) The mandatory minimum penalty amount for the serious and chronic effluent limit violations under 13385, subdivisions (h) and (i), is $60,000. (See Table B for calculations)

CONSIDERATION OF FACTORS FOR DISCHARGE EVENT VIOLATIONS UNDER 13327 AND 13385(e)

1. Nature, circumstances, extent and gravity of the violation

The failure to identify and eliminate stormwater I&I into the sanitary sewer was the cause of the discharges of untreated sewage from the collection system and partially treated sewage from the WWTP into surface waters on the 25th and 26th of January 2008. In addition to these Discharge Events, this complaint also addresses numerous other collection system spills reported by the Discharger that are detailed in Table A.

All the discharges detailed in Table A were considered in establishing the recommended liability. The primary focus of the recommended liability, however, is on the Discharge Events because those events present a relatively greater threat to water quality. Discharger's continuing failure to identify and eliminate stormwater I&I into the sanitary sewer threatens to cause future discharges of untreated sewage from the collection system into surface waters and overwhelm the WWTP, compromising its ability to fully treat sewage.

a. January 25, 2008, raw sewage overflow

The gravity of this violation is moderately significant because though diluted with stormwater, the overflow was of a large volume and there were impacts to receiving water beneficial uses. More than 100,000 gallons of raw sewage was discharged from various points in the collection system to surface waters. The discharges resulted in the closure of the Pacifica State Beach and North Sharp Park Beach for 5 days. The length of these closures was determined by the County Health Department based on sampling results for fecal coliform.

These discharges of raw sewage were the result of the Discharger's collection system having I&I problems that render it incapable of handling the amount of rain received from the January 25, 2008 winter storm. The beach closures impacted both water contact and non-contact recreational use. The discharge threatened public health because, by its nature, raw sewage, even in diluted form, contains high concentration of bacteria and viruses. It is unknown to what extent the public was exposed to the discharge prior to closure of the beaches.

b. January 25 and 26, 2008, WWTP bypass

This discharge violation is moderately significant because though the sewage was diluted and partially treated, the discharge volume was extremely large and the potential impacts to beneficial uses were substantial. The Discharger released approximately 6.9 million gallons of primary and/or secondary treated wastewater that bypassed the filtration process, was run through the ultraviolet (UV) disinfection process, and then discharged to surface waters on January 25 and 26, 2008. This partially treated wastewater was discharged to Calera Creek, which flows through Calera Creek Wetlands into the Pacific Ocean at Rockaway Beach.

It is impossible to determine the actual impacts to water quality and the beneficial uses because the Discharger did not conduct the appropriate sampling. NPDES Permit No. CA0038776 Attachment G Standard Provisions C.2.h requires that "[w]hen any type of bypass occurs, composite samples shall be collected on a daily basis for all constituents at all affected discharge points which have effluent limits for the duration of the bypass."

The Discharger's sampling was not sufficient to determine the impacts of WWTP bypass discharge. Furthermore, the monthly Discharger Self-Monitoring Report for January 2008 shows that effluent Biochemical Oxygen Demand (BOD), oil and grease, organic nitrogen, ammonia and fecal coliform were not sampled on the 25th, the day of the bypass. Accordingly, the impacts to water quality and beneficial uses of the receiving stream were not

assessed by the Discharger during the bypass event on January 25, 2008. The grab samples (for fecal coliforms) taken on the upper and lower Calera Creek after January 25, did not show conclusive evidence of long-term impact of the bypass on Calera Creek. The first bacteriological samples of Calera Creek were taken on the morning of January 26 after the bypass was over and the wastewater started receiving full treatment.

Regardless, the discharge of 6.9 million gallons of partially treated sewage would be expected to raise the level of pathogens, ammonia, oxygen-demanding substances, and other pollutants in the receiving waters. On January 25th the total suspended solids (TSS) was measured at 68.8 mg/l and turbidity was 48.5 NTU (as daily averages/ 24-hour composite). The Effluent Limitations for TSS and turbidity are 20 mg/l as a daily maximum and 10 NTU as an instantaneous maximum, respectively. The discharger reported TSS and turbidity as the only effluent limit violations for January 2008.

It can reasonably be assumed that grab samples for TSS and turbidity collected during the actual treatment system bypass (which did not begin until 12 noon on the 25th) would have had shown significantly higher levels of solids and resulting turbidity. This assumption is relevant since solids and turbidity can significantly diminish the ultraviolet light penetration for proper disinfection of the discharged wastewater. Accordingly, fecal coliform organism concentrations could have also exceeded the Effluent Limitations during the bypass period. In fact, the high solids bypassed prompted the Operators to switch the UV system to operate at 100% power, rather than the 50% standard rate; but there is no indication or technical documantation that adequate disinfection was achieved during this period.

It can also be reasonably assumed that the domestic wastewater solids in the bypass carried significant BOD. Accordingly, it is likely that the daily maximum BOD Effluent Limitation of 20 mg/l was also violated.

Ammonia is present in domestic wastewater and can be discharged in toxic concentrations if not reduced during treatment. There were periods during the treatment system bypass where the SBRs were operated in a "fill and decant" mode, resulting in no biological treatment or aeration of the waste stream. Without biological treatment and aeration, nitrification would not occur and ammonia in the waste stream would not be reduced. Therefore, It is reasonable to assume that ammonia concentrations would have exceeded the Effluent Limitation of 10 mg/l as a daily maximum during the SBR fill and decant mode of operation.

The potential discharge of ammonia, TSS and fecal coliform organisms at elevated concentrations also threatens to cause violation of Receiving Water Limitations for floating, suspended or deposited matter and toxic and

deleterious substances and to degrade the aquatic life and contact recreation beneficial uses of the receiving stream.

The Discharge Events resulted in the discharge of raw sewage and a large volume of partially treated sewage to waters of the United States. Partially treated wastewater typically does not pose the same level of toxicity or impact as an equal volume of raw wastewater. Nonetheless, the Discharge Event resulted in 5 days of closure and warning signs at 3 beaches and impacted water contact recreation (REC-1) and non-contact water recreation (REC-2). The Discharge Events threatened public health, and impaired the recreational use and aesthetic enjoyment of these beaches. Although discharge occurred during the winter, the REC-1 and REC-2 impact was significant as beach use or recreational use in Calera Creek, Calera Creek Wetlands and Rockaway Beach, Pacific State Beach, and North Sharp Park beaches are higher than average use areas for the San Francisco Bay Region.

2. Whether the discharge is susceptible to cleanup or abatement

The untreated overflow discharged to surface waters and flowed into the Pacific Ocean and onto various public beaches. The 6.9 million gallons of partially treated sewage was discharged into Calera Creek which flows through a wetland before discharging into the Pacific Ocean at Rockaway Beach. Neither discharge was susceptible to cleanup or abatement. Instead, the Regional Water Board would require the Discharger to prevent such discharges.

3. The degree of toxicity of the discharge

For all the discharge events described herein, the degree of toxicity, of raw (untreated) or partially treated wastewater, cannot be accurately quantified. The untreated or partially treated material would be expected to have a deleterious effect on the environment, including causing potential nuisance in the near shore areas. The failure of the Discharger to take the appropriate samples deprived the Regional Water Board staff and other responding agencies of information that may have been useful in fully assessing impacts to the environment. However, raw or partially treated wastewater typically has elevated concentrations of biochemical oxygen demand, total suspended solids, oil and grease, ammonia, high levels of viruses and bacteria, trash (only in the case of raw sewage) and toxic pollutants (such as heavy metals, pesticides, personal care products, and pharmaceuticals). These pollutants exert varying levels of impact on water quality, and, as such, will adversely affect beneficial uses of receiving waters to different extents. Timely and appropriate sampling would have been the Discharger's opportunity to show minimal impacts, if that were the case.

4. The Discharger's ability to pay and the effect on the Discharger's ability to continue in business

The Discharger is financially stable and has the financial resources to provide for debt service obligations and financial needs, including the recommended liability. Determination of the discharger's ability to pay the recommended liability amount is based on a model called "MUNIPAY", which was developed by Industrial Economics for the United States Environmental Protection Agency.

It is estimated that the discharger has the financial ability to pay for the necessary collection system repair as well as the recommended Administrative Civil Liability (ACL) amount. This is based on two analyses that focus on demographic and affordability data. The demographic analysis shows that the city's median home values, median household income, and the individuals below the poverty line are substantially better than the values for the State and the nation. The affordability analysis concludes that the Discharger can afford the recommended ACL amount using internal financial resources, will have substantial funds still available to conduct collection system repairs, and if necessary, can borrow additional funds. This means that the Discharger does not have to raise sewer rates to pay the proposed ACL amount. The sources of data used for the ability to pay analysis are the Pacifica Comprehensive Annual Financial Report-Fiscal Year ending 6/30/2008 (CAFR 2008), the City of Pacifica Adopted Budget Fiscal Year 2008-2009, and the US Census.

The last reported balances of the General Fund and the Sewer Enterprise Fund totaled $11,477,958 (June 30, 2008). Allowing for the MUNIPAY recommended year end balances for the subsequent year, $8,256,727 would be available for paying the ACL and initiating the necessary collection system repairs.[1] In conclusion, the City has the ability to pay in excess of $8,000,000 for the necessary collection system repairs and the proposed administrative liability out of current resources without having to seek a sewer rate increase or taking on additional debt to finance the liability.

5. Any voluntary cleanup efforts undertaken

Discharger did not report any voluntary cleanup efforts as to the Discharge Events.

[1] These estimates will be different for Fiscal Year 2008-2009 but that report is not currently available.

6. Any prior history of violations

In 2005 the Regional Water Board issued Complaint No. R2-2005-0066 to the Discharger for mandatory minimum penalties (MMP) for $396,000 for effluent limitation violations at the WWTP. The Discharger waived their right to a hearing and paid the proposed liability. Both the Supplemental Environmental Project (SEP) and payment obligations have been fulfilled by the Discharger.

In 2007 the Regional Water Board issued Complaint No. R2-2007-0016 for $190,000 in response to a discharge of 253,000 gallons of raw sewage from the collection system to Rockaway Beach. The Discharger waived their right to a hearing and agreed to the proposed liability. The Discharger has fulfilled the payment obligation; however the SEP obligation has not been fulfilled. The SEP, a private lateral program, is expected to be completed by December 2009.

7. The degree of culpability

The Discharger's WWTP is relatively new and was sized to accommodate additional flows from excessive I&I. The collection system, however, was not expanded to transport the excess flows, nor is it maintained in a manner that would minimize I&I. In fact, Discharger has failed to correct I&I issues in the past by only investigating sources of I&I for a small portion of its collection system. Furthermore, the Discharger's collection system maintenance efforts at the time these discharge violations occurred were not sufficient to significantly reduce I&I with the limited exception of broken sewer line replacements.

The need to bypass partially treated sewage could have been substantially reduced during the approximately 8-hour period when plant influent flows exceeded 20 mgd if the Discharger had repaired the Unit No. 2 SBR prior to the January 2008 storm. The Discharger appears to have taken reasonable steps to repair the Unit No. 2 SBR as quickly as possible.

The Discharger is highly culpable for the events described herein. All of the overflow and the bypass events detailed above would have been avoided altogether if the Discharger had taken the appropriate steps to identify and minimize stormwater I&I into the sanitary sewer. The Discharger has been aware for years of the potential for high I&I to generate wastewater volumes in excess of the collection system and the WWTP's capacity. Nevertheless, the Discharger has failed to initiate timely actions necessary to reduce I&I and eliminate or, at least, reduce the threat of an unauthorized discharge occurring. Compounding this failure, the Discharger also failed to conduct the appropriate sampling that is required under their NPDES permit and the federal regulations.

The Discharger should not be rewarded for its failure to upgrade and maintain its collection system, provide adequate maintenance staff, and proper training of that staff to conduct the repairs and maintenance necessary to reduce I&I.

8. Economic Benefit or savings, if any, resulting from the violation

Economic benefit represents the financial gains that a violator accrues by delaying and/or avoiding compliance with applicable environmental laws and regulations. Funds not spent on environmental compliance are available for other profit-making activities or, alternatively, avoids the costs associated with obtaining additional funds for environmental compliance.

The appropriate economic benefit calculation should represent the amount of money that would make the violator indifferent between compliance and noncompliance. If the enforcement agency fails to recover through a civil penalty at least this economic benefit, then the violator will retain a gain. Because of the precedent of this retained gain, other entities may see an economic advantage in similar noncompliance, and the penalty will fail to deter potential violators. Economic benefit does not represent compensation as in a typical "damages" calculation for a tort case, but instead is the minimum amount by which the violator must be penalized so as to return it to the position it would have been in had it complied on time. Furthermore, Water Code section 13385(e) provides that "(a)t a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation."

As discussed earlier, the Discharge Events and other SSOs are primarily due to insufficient capacity of the collection system to handle wet weather I&I. Had the collection system pipes been in better condition with lower I&I, or been larger, the Discharge Events would not have occurred. It is clear that the Discharger received some level of economic benefit from failing to maintain, repair or replace its collection system to an adequate level that would have prevented the Discharge Events.

Quantifying the Discharger's economic benefit, however, is difficult considering that the Discharger has not conducted a collection system capacity assessment since the early 1980 nor presented any other evaluation of the condition of the their collection system that would otherwise assist in identifying what collection system repairs and upgrades are necessary for to obtain compliance and reduce I&I to an acceptable level. Accordingly, the economic benefit analysis is based on the generalized assumptions discussed below.

The Discharger's collection system consists of 82 miles of pipe. Assuming a 50-year life, the system should be replaced or renovated at an average rate of

1.64 mi/yr (=82mi/50yr). Using an industry average cost of about $1 million/mi for pipe replacement, the capital cost for the Discharger for proper collection system maintenance, repair and replacement would be an average $1.64 million/year. Over the past four years, the Discharger has spent $531,000 (or $133,000/yr equalized over the 4 years) on collection system related capital projects excluding pump stations. (The Discharger is budgeted to spend $1.2 million in its fiscal year 2009/2010.)

Accordingly, it is estimated that the Discharger's deferred cost of replacement of the collection system for the four years immediately proceeding the January 2008 Discharge Events is $6,028,000. While the level of expenditure over four years may not have totally prevented the wet weather spills, four years is used because it is a reasonable timeframe for when the Discharger could and should have scheduled major capital expenditures to start replacement of its collection system.

The Discharger completed a number of capital improvement projects identified in its 1982 engineering report to increase capacity and reduce I&I in the 1980's. Then, in the 1990s, it turned its efforts appropriately towards treatment plant upgrades as ordered by Regional Water Board Cease and Desist Order No. 93-112 as amended by 98-124. A new treatment plant was constructed and put into service in September 2000. Allowing two years for Discharger to focus its efforts on startup issues, the Discharger could and should have initiated a collection system capacity assessment in 2002, two decades after its last assessment.

This assessment study could have been completed in early 2004 to guide the Discharger's future collection system efforts. Thus, starting in 2004 or four years before the Discharge Events, the Discharger could and should have been implementing an appropriate level of capital improvements to its collection system pipes.

Assuming: (1) that the appropriate level of repair and or replacement would have cost Discharger $ 1,640,000 annually; and (2) that the Discharger should have been performing this level of repair or replacement of the collection system for at least the four years immediately proceeding the Discharge Events; and (3) that compliance activities are initiated and the administrative civil penalty payment is made by January 1, 2010, then the economic benefit of delaying compliance is estimated to be $1,300,000. Accordingly, the recommended liability proposed herein is sufficient to comply with Water Code section 13385(e)'s requirement that liability be assessed at a level which is sufficient to recover economic benefit.

9. Other matters as justice may require

State and Regional Water Board Staff time to investigate and prepare the Complaint is estimated to be about 400 hours. Based on an average cost to the State of $150 per hour, the total staff cost is $60,000.

The Regional Water Board adopted Resolution No. R2-2005-0059 declaring its 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 I&I from private sewer laterals, as an important factor when considering enforcement actions for sanitary sewer overflows.

Though the Discharger appears to have a private lateral program, this did not factor in favor of or against the Discharger in the proposed penalty amount. Since 1976, the Discharger has had an ordinance that requires inspection of private laterals if an application for a building permit involves the addition of plumbing fixtures or drains. In 2008, the Regional Water Board approved supplemental environmental project funds towards a private sewer lateral program. The Discharger has not provided records demonstrating implementation of its ordinance prior to 2008.

CONSIDERATION OF FACTORS FOR EFFLUENT LIMIT AND RECEIVING WATER LIMIT VIOLATIONS UNDER 13327 AND 13385(e)

1. Nature, circumstances, extent, and gravity of the violation

From January 2006 through December 2008 the Discharger has reported that there were 28 effluent limit violations and 3 receiving water limit violations. Of the effluent limit violations, 20 are subject to mandatory minimum penalties as detailed in section 2 of the Violations section herein.

In addition to the mandatory minimum penalty amounts for these violations, additional penalties are proposed for the fecal coliform violations in August 2006. Coliform organisms are intended as an indicator of the effectiveness of the entire treatment train and the effectiveness of removing other pathogens. Coliform are controllable through disinfection, and violations can pose a significant threat to human health through water contact recreation, fishing, and contact with water drawn from the source for industrial use.
Treated wastewater was discharged to Calera Creek which flows through wetlands into the Pacific Ocean at Rockaway Beach. The beneficial uses of Calera Creek as defined by the NPDES permit and mandated by the Basin Plan are: agricultural supply; cold freshwater habitat; freshwater replenishment; groundwater recharge; industrial service supply; fish

migration; industrial process supply; water contact recreation; non-contact water recreation; fish spawning; warm freshwater habitat; and wildlife habitat.

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

   The violations of effluent and receiving water limitations are not susceptible to cleanup or abatement.

3. **The degree of toxicity of the discharge**

   Discharge of effluent in violation of effluent and receiving water limits would be expected to have a deleterious effect on the environment, including causing potential nuisance in the near shore areas. Fecal coliform violations can pose a significant threat to human health. The fecal coliform violations occurred during the month of August 2006, a time when greater recreational use increases the opportunity for human contact with wastewater in the area.

4. **The Discharger's ability to pay and the effect on the Discharger's ability to continue in business**

   The analysis of this factor is the same as presented above in section 4 of the Consideration of Factors for Discharge Event Violations.

5. **Any voluntary cleanup efforts undertaken**

   These violations of effluent and receiving water limitation were not susceptible to cleanup.

6. **Any prior history of violations**

   The analysis of this factor is the same as presented above in section 6 of the Consideration of Factors for Discharge Event Violations.

7. **The degree of culpability**

   All wastewater permittees are prohibited from discharging pollutants in violation of permit limits, and the discharger is responsible for compliance with the effluent limit and receiving water limits in this NPDES permit. In particular, coliform violations are controllable through adequate disinfection. As noted above, coliform organisms are intended as an indicator of the effectiveness of the entire treatment train and the effectiveness of removing other pathogens. Proper operation of the treatment process to control fecal coliform is critical for ensuring effective control of pathogens that pose a threat to human health.

8. **Economic Benefit or savings, if any, resulting from the violation**

It is estimated that the Discharger did not receive any quantifiable economic benefit or savings from the effluent limit and receiving water limit violations.

9. Other matters as justice may require

Staff costs for issuance of this action are included in section 9 of the Consideration of Factors for Discharge Event Violations.

PROPOSED CIVIL LIABILITY

Based upon consideration of the factors in Sections 13327 and 13385, the Assistant Executive Officer proposes civil liability be imposed upon Discharger in the amount of $2,300,000. This amount includes $87,000 for effluent and receiving water limit violations cited above - $60,000 of which is for mandatory minimum penalties and the remaining $27,000 is liability to address coliform violations. Of this total, $2,298,845 will be paid to the State Water Board's Cleanup and Abatement Account, and $1,155 will be paid to the State Water Board's Waste Discharge Permit Fund.

Dyan C. Whyte
Assistant Executive Officer

October 23, 2009
Date

Attachment: Waiver of Hearing

Table A - Pacifica SSO and Bypass Violations

Item	ACL Code	Date	Description	Calculation of penalty. Spill Volume (gallons)	Duration (days)	Max Penalty
S1	13385	12/27/2004	495 Linda Mar Blvd.(Linda Mar pump station).	300,000	1	$3,000,000
S2	13350	1/16/2005	7 HOLIDAY CT.	350	1	$5,000
S3	13385	1/21/2005	GRAND AVE	520	1	$10,000
S4	13350	2/25/2005	900 Block Palmetto	200	1	$5,000
S5	13350	2/28/2005	790 ROCKAWAY BEACH BLVD.	90	1	$5,000
S6	13385	3/16/2005	1600 BLOCK HIGGINS	300	1	$10,000
S7	13385	6/5/2005	76 Cranham ct.	15	1	$10,000
S8	13385	8/10/2005	Hwy.1 @ Seabowl Lane	20	1	$10,000
S9	13385	9/2/2005	407 HEATHCLIFF DR	100	1	$10,000
S10	13350	12/23/2005	Sharp Park Golf Course	700	1	$7,000
S11	13385	3/6/2006	Paloma at Francisco	650	1	$10,000
S12	13385	4/29/2006	901 OCEANA	20	1	$10,000
S13	13350	5/18/2006	Sharp Park Road	20	1	$5,000
S14	13385	8/7/2006	MH in front of 1450, 1459 Perez	200	1	$10,000
S15	13350	9/6/2006	NATAQUA@REINA DEL MAR	10	1	$5,000
S16	13385	10/30/2006	351 Carmel	400	1	$10,000
S17	13350	12/21/2006	200 BONITA	40	1	$5,000
S18	13385	1/11/2007	GALVEZ EASEMENT	200	1	$10,000
S19	13385	1/16/2007	300 BLOCK PACIFIC	300	1	$10,000
S20	13385	3/23/2007	Paceito Terr.	50	1	$10,000
S21	13350	3/27/2007	Carmel Ave	200	1	$5,000
S22	13385	4/18/2007	1200 Block of Crespi Drive	60	1	$10,000
S23	13385	4/18/2007	500 block of Carmel	100	1	$10,000
S24	13385	5/13/2007	Kavanaugh Way/Glencourt Way	100	1	$10,000
S25	13350	5/30/2007	Seville Drive	5	1	$5,000
S26	13385	6/3/2007	Gypsy Hill Road	50	1	$10,000
S27	13350	6/3/2007	Cedar Lane	50	1	$5,000
S28	13350	6/20/2007	Farallon Easment Sewer Main	40	1	$5,000
S29	13385	7/1/2007	Alta Vista Drive	20	1	$10,000
S30	13385	7/18/2007	Carmel Ave	300	1	$10,000
S31	13385	8/16/2007	Reina Del Mar Ave	100	1	$10,000
S32	13385	8/18/2007	Reichling Ave	200	1	$10,000
S33	13350	9/24/2007	Fassler Ave Townhomes	200	1	$5,000
S34	13350	12/25/2007	Rosita Road	500	1	$5,000
S35	13385	1/4/2008	Linda Mar Blvd	900	2	$20,000
S36	13385	1/25/2008	Bypass from WWTP	6,900,000	2	$69,010,000
S37	13385	1/25/2008	Linda Mar Blvd	25,000	2	$260,000
S38	13385	1/25/2008	Avalon Drive	31,500	2	$325,000
S39	13385	1/25/2008	Palmetto Ave	47,250	2	$482,500
S40	13350	2/25/2008	Lerida Way	30	1	$5,000
S41	13350	3/16/2008	Francisco Blvd	40	1	$5,000
S42	13350	3/21/2008	400 Rockaway Beach Ave	1	1	$5,000
S43	13385	4/2/2008	1595 Linda Mar Blvd	10	1	$10,000
S44	13350	4/7/2008	Sharp Park Road / Gypsy Hill Road	875	1	$8,750
S45	13350	4/7/2008	220 Nelson Ave	1	1	$5,000
S46	13385	4/8/2008	Higgins Way Easement	160	1	$10,000
S47	13350	4/10/2008	663 Beaumont Blvd	10	1	$5,000
S48	13350	4/21/2008	1152 Linda Mar Blvd	10	1	$5,000
S49	13350	7/14/2008	455 Rockaway Beach Ave	2	1	$5,000
S50	13385	8/17/2008	Lands End Apartments	300	1	$10,000
S51	13350	8/22/2008	La Mirada	5	1	$5,000
S52	13350	8/28/2008	482 Goodman	20	1	$5,000
S53	13350	11/17/2008	Carmel Ave	150	1	$5,000
S54	13385	2/15/2009	Intersection of Beaumont Blvd and Shasta Lane	200	1	$10,000
S55	13350	2/23/2009	301 Clifton Road	2	1	$5,000
S56	13350	3/9/2009	Sterling Road	20	1	$5,000
S57	13350	3/28/2009	Hibbert Court Easment Main	100	1	$5,000
S58	13385	4/15/2009	Crespi Drive @ Highway 1	175	1	$10,000
S59	13385	6/23/2009	Farallon Ave	80	1	$10,000
				TOTAL FOR SPILL AND BYPASS VIOLATIONS:		**$73,498,250**

Table B - Pacifica Mandatory Minimum Penalty Violations

Item	Date	Description	Limit	Reported Level	Units	Period Type	% Exceedence	MMP		Calculation of penalty.			
								Serious	Chronic	Days of Violation	Minimum Penalty	Recommended Penalty	Max Penalty
E1	2/3/2006	pH	6.5	6.44		inst. minimum				1			$10,000
E2	5/2/2006	cyanide	4.5	6.2	µg/l	monthly avg	38%			31			$310,000
E3	8/7/2006	coliform	20	45.6	MPN/100 ml	mean – last 5	128%			1		$6,000	$10,000
E4	8/15/2006	coliform	20	31.4	MPN/100 ml	mean – last 5	57%			1		$6,000	$10,000
E5	8/16/2006	coliform	20	64.8	MPN/100 ml	mean – last 5	224%		Yes	1	$3,000	$6,000	$10,000
E6	8/17/2006	coliform	20	77.6	MPN/100 ml	mean – last 5	288%		Yes	1	$3,000	$6,000	$10,000
E7	8/18/2006	coliform	20	198.8	MPN/100 ml	mean – last 5	894%		Yes	1	$3,000	$6,000	$10,000
E8	8/21/2006	coliform	20	97.6	MPN/100 ml	mean – last 5	388%		Yes	1	$3,000	$6,000	$10,000
E9	8/22/2006	coliform	20	36.1	MPN/100 ml	mean – last 5	81%		Yes	1	$3,000	$6,000	$10,000
E10	1/31/2007	cyanide	4.5	5.7	µg/l	monthly avg	27%	Yes	Yes	31	$3,000	$3,000	$310,000
E11	4/3/2007	RW2 DO (receiving water limit)	7	1.67	mg/l	minimum	-76%			30			$300,000
E12	4/18/2007	ammonia	10	11	mg/l	daily	10%			1			$10,000
E13	6/13/2007	ammonia	5	5.4	mg/l	daily	8%			1			$10,000
E14	7/29/2007	pH	6.5	6	minimum	inst. minimum				1			$10,000
E15	1/25/2008	TSS	20	68.8	mg/l	daily	244%	Yes		1	$3,000	$3,000	$10,000
E16	1/25/2008	turbidity	10	48.5	NTU	inst. maximum	385%			1			$10,000
E17	2/12/2008	ammonia	10	14	mg/l	daily	40%	Yes	Yes	1	$3,000	$3,000	$10,000
E18	2/19/2008	ammonia	10	16	mg/l	daily	60%	Yes	Yes	1	$3,000	$3,000	$10,000
E19	2/29/2008	ammonia	5	7.86	mg/l	monthly avg	57%	Yes	Yes	29	$3,000	$3,000	$290,000
E20	3/11/2008	RW2 DO (receiving water limit)	7	0.9	mg/l	minimum	-87%			1			$10,000
E21	3/11/2008	RW4 DP (receiving water limit)	7	5.32	mg/l	minimum	-24%			1			$10,000
E22	6/10/2008	ammonia	5	5.2	mg/l	daily	4%		Yes	1	$3,000	$3,000	$10,000
E23	6/17/2008	ammonia	5	5.7	mg/l	daily	14%		Yes	1	$3,000	$3,000	$10,000
E24	6/24/2008	ammonia	5	6.5	mg/l	daily	30%		Yes	1	$3,000	$3,000	$10,000
E25	6/30/2008	ammonia	2	5	mg/l	monthly avg	150%	Yes	Yes	30	$3,000	$3,000	$300,000
E26	9/2/2008	ammonia	5	6	mg/l	daily	20%		Yes	1	$3,000	$3,000	$10,000
E27	9/6/2008	ammonia	5	6	mg/l	daily	20%		Yes	1	$3,000	$3,000	$10,000
E28	9/8/2008	ammonia	5	6	mg/l	daily	20%		Yes	1	$3,000	$3,000	$10,000
E29	9/10/2008	ammonia	5	7	mg/l	daily	40%	Yes	Yes	1	$3,000	$3,000	$10,000
E30	9/11/2008	ammonia	5	7	mg/l	daily	40%	Yes	Yes	1	$3,000	$3,000	$10,000
E31	9/30/2008	ammonia	2	3	mg/l	monthly avg	50%	Yes	Yes	30	$3,000	$3,000	$300,000
						TOTALS FOR EFFLUENT LIMIT VIOLATIONS:				**206**	**$60,000**	**$87,000**	**$2,060,000**

Attachment B

Table 1 -

Additional Mandatory Minimum Violations Table

Item	Date	Description	Limit	Reported Level	Units	Period Type	% Exceedence	MMP		Calculation of penalty.		
								Serious	Chronic	Days of Violation	Minimum Penalty	Max Penalty
E32	5/2/2006	cyanide	5.2	6.2	µg/l	daily	19%		Yes [1]	1	$3,000	$10,000
E33	3/8/2009	Turbidity	10	14.5	NTU	inst. minimum	45%	Yes	Yes	1	$3,000	$10,000
E34	3/8/2009	Total Suspended Solids	20	35	mg/l	daily	75%	Yes	Yes	1	$3,000	$10,000
E35	4/28/2009	bis(2-ethyl(hexyl)phthalate)	21	26	µg/l	daily	24%	Yes	Yes	1	$3,000	$10,000
E36	2/16/2010	bis(2-ethyl(hexyl)phthalate)	21	22	µg/l	daily	5%			1		$10,000
E37	7/8/2010	ammonia	5	5.6	µg/l	daily	12%			1		$10,000
E38	7/11/2010	ammonia	5	6.7	µg/l	daily	34%			1		$10,000
							TOTALS FOR EFFLUENT LIMIT VIOLATIONS:			**7**	**$12,000**	**$70,000**

Notes

[1] this chronic violation exceeds the three not counted towards MMP during any 180- day period and was inadverently excluded from the violations addressed by ACL Complaint No. R2-2009-0075.

ATTACHMENT - C

Project Name: City of Pacifica Focused Private Sewer Lateral Grant Program

Project Developed by: City of Pacifica

Project to be Performed by: City of Pacifica

Contact: Brian Martinez, Collection System Manager
City of Pacifica
700 Coast Hwy.
Pacifica, Ca. 94044
Telephone: (650) 738-4669
Fax: (650) 355-5721
Email: martinezb@ci.pacifica.ca.us

Compliance with SEP Criteria:

1. Benefit to Water Quality and Beneficial Uses

The City's Focused Private Sewer Lateral Grant Program will reduce inflow and infiltration (I/I) into the City's collection system from defective private sewer laterals. A reduction in I/I will benefit surface water quality and beneficial uses by decreasing the number and volume of spills of untreated or partially treated sewage from the City's collection system to surface waters during wet weather. In addition, the program will reduce the number and volume of spills to surface waters from private laterals.

2. SEP is not an Obligation of Discharger

The City is not required to develop, implement or fund the Focused Private Sewer Lateral Grant Program by any permit or order or any local, state or federal law, nor has this program been previously contemplated as a City funded program or included in prior City budgets.

3. No Fiscal Benefit to Water Board

The Focused Private Sewer Lateral Grant Program does not provide any fiscal benefit to the Water Board's functions, its members or its staff.

4. Nexus Between Violation and SEP

A nexus exists between the City's spill violations and the Focused Private Sewer Lateral Grant Program because repair or replacement of defective laterals will

reduce the amount of I/I in the City's collection system, thereby reducing the likelihood of future wet weather spills from the City's collection system. In addition, repair or replacement of defective laterals will reduce the number of private lateral spills and their related consequences.

Description of Project:

1. The goal(s) of the SEP and detailed plans for achieving the goal(s)

The goal of the Focused Private Sewer Lateral Grant Program is (1) to reduce the rate of I/I in the City's collection system and the number and volume of private lateral spills by incentivizing homeowners to repair or replace their defective private sewer laterals; and (2) to focus the City's efforts in areas with the greatest I/I from laterals. The City intends to achieve these goals by making grant funds available for lateral repair/replacement in such a way as to accomplish the performance measure standard described in the following section. These funds will be allocated to fund or subsidize the repair or replacement of defective laterals in basins or locations that are determined by the City's Master Plan and condition assessment program to have the highest levels of I/I from lateral sewers. A description or map showing these high I/I basins will be provided in the first quarterly report due to the Regional Water Board and updated and/or revised as necessary in each subsequent quarterly report.

City staff will conduct closed-circuit television inspections of private laterals in those areas that are determined by the City's Master Plan and condition assessment program to have the highest levels of I/I from lateral sewers. In addition, when the City replaces a main in a basin that has been identified as having high I/I from laterals, the City will inspect all of the laterals connected to the main scheduled for replacement.

If the City's inspection identifies a defect in a private lateral, the City will notify the homeowner of the defect, direct the homeowner to repair or replace the lateral within a certain period of time, and provide the homeowner with a list of contractors with whom the City has previously negotiated a fixed or per-unit price. The homeowners will have the option of using one of the contractors on the City's list or a contractor of their choice. Upon the contractor's satisfactory completion of the work, the City will reimburse the homeowner in an amount deemed appropriate by the City to achieve the performance measure described below.

2. Key personnel involved in SEP

The City's collection system staff will develop and implement the Focused Private Sewer Lateral Grant Program.

3. Plans to continue and/or maintain the SEP beyond the SEP-funded period

N/A

4. Documented Support

N/A

Project Milestones and Budget:

The City will fund the Focused Private Sewer Lateral Grant Program in the amount of $650,000. The program will include the following milestones:

June 1, 2011– The City will develop outreach program informing homeowners about the Private Sewer Lateral Grant Program. The City, in its outreach material or website in publicizing the Program, shall state in a prominent manner that it is being partially funded as part of the settlement of an enforcement action by the Regional Water Board against the City.

August 1, 2011 – The City will implement outreach program

September 1, 2011 – Submit report to Regional Water Board on implementation of outreach program

The City shall submit quarterly status reports as further described below in the section entitled “Reports to the Regional Water Board” on or before the following dates:

October 20, 2011
January 20, 2012
April 20, 2012
July 20, 2012
October 20, 2012
January 20, 2013
April 20, 2013
July 20, 2013
October 20, 2013
January 20, 2014
April 20, 2014
July 20, 2014
October 20, 2014

January 20, 2015- Submit final report and certification of completion as further described in the Settlement Agreement for this matter

The City will maintain a monthly accounting of grant funds.

Project Performance Measures:

The City will measure the success of the Private Sewer Lateral Grant Program by tracking the number, length, location, and cost of repairs/replacements of defective private laterals. Suspension of $650,000 in administrative civil penalty shall occur after successful completion of the program that equates to the satisfactory repair or replacement of a total of 382 defective private sewer laterals and compliance with the SEP provisions in the Settlement Agreement for this matter, which include the requirement that the City demonstrate that it has expended a minimum of $650,000 to implement the SEP project. If the program results in a lesser number of private laterals repaired or replaced, the suspended amount shall be the lesser of (a) the amount that the City can demonstrate that it has expended to implement the SEP, including but not limited to, funds spent by the City on public outreach, inspections of private laterals, or grants to homeowners or (b) the following:

Minimum # of laterals repaired/replaced	Suspended Amount
287	$487,500
191	$325,000
96	$162,500

The difference between $650,000 and the suspended amount shall be paid by the City to the State Cleanup and Abatement Account.

Reports to the Regional Water Board:

The City will provide a quarterly progress report to the Regional Water Board's designated representative (the San Francisco Estuary Partnership) and the Division of Financial Assistance of the State Water Board in accordance with the schedule set forth in the Project Milestones and Budget section above. Each report shall include a table showing a running tally of the number and length of laterals inspected, whether work was required on the inspected laterals, the number and length of laterals repaired or replaced, the street address locations for each lateral videoed/inspected and repaired/replaced, the month and date the work was completed, the amount of grant funds expended on each lateral, and the amount of grant funds remaining. The quarterly reports shall also include summaries of outreach conducted and copies of any supporting materials for the program.

The City will provide a final report and certification of completion in accordance with the Settlement Agreement for this matter.

Third Party Oversight Organization:

San Francisco Estuary Partnership

ATTACHMENT D

Project Name: Rockaway Creek West of Highway 1 Restoration

Project Developed by: City of Pacifica

Project to be Performed by: City of Pacifica

Contact: Aren Clark, Public Works Supervisor
City of Pacifica
155 Milagra Drive
Pacifica, CA 94044
Telephone: (650) 738-3764
Fax: (650) 738-9747
Email: clarka@ci.pacifica.ca.us

Compliance with SEP Criteria:

1. Benefit to Water Quality and Beneficial Uses

The Rockaway Creek West of Highway 1 Restoration will result in removal of non-native vegetation to be replaced with native vegetation on the western end of the creek were it enters the Pacific Ocean. The native vegetation will provide enhanced habitat for wildlife. Willow trees will secure the creek banks preventing erosion and a bio-swale will help reduce pollutants contained in the water runoff from the parking lot entrance road from entering the creek.

2. The SEP is not an Obligation of the City of Pacifica

The City of Pacifica is not required to develop implement or fund the Rockaway Creek West of Highway 1 Restoration by any permit or order, or any local, state or federal law. City funding has never been contemplated for this project nor has it been included in prior City budgets.

3. No Fiscal Benefit to Water Board

The Rockaway Creek West of Highway 1 Restoration does not provide any fiscal benefit to the Water Boards functions, its members or its staff.

4. Nexus Between Violation and SEP

The Rockaway Creek West of Highway 1 Restoration Project is centered in the Pacifica area very close to where the many of the discharges occurred.

Description of Project:

1. The goal(s) of the SEP and detailed plans for achieving the goal(s)

The City of Pacifica proposes to restore approximately 270 linear feet section of Rockaway Creek west of Highway 1. The goals of the project are to reduce sediment loading to surface waters caused by erosion of the creeks banks and to improve the quality of the stormwater entering the creek from the adjacent parking lot.

In order to accomplish these goals, the City of Pacifica will remove all non-native vegetation from the Rockaway Creek channel and banks west of Highway 1. All existing native plants will be saved for replanting. The banks between the point at which the pipe daylights into the creek and the pedestrian bridge approximately 150 feet to the west will be protected using erosion control material, coir logs and willow stakes. The creek area west of the pedestrian bridge will be protected using erosion control material in conjunction with the replanting of appropriate native plant species. Several rocks (four to six ton) will be placed at the creek opening to act as a breakwater and prevent large waves from scouring out the newly planted vegetation. A bioswale will be created to capture water drainage from the parking lot entrance road prior to entering the creek. A temporary irrigation system will be installed to irrigate the new vegetation for a period of two years, or until the new vegetation is established, after which the irrigation system will be removed. Maintenance will be performed at the site to remove non native vegetation for a period of two years, and possibly three if needed.

The City will establish two fixed locations showing the project area where digital photos will be taken at the beginning of the project and then periodically to document the growth and establishment of the planted native species until the end of the project. These photos will be included in the quarterly and final reports described in a later section.

The native plants which will be planted as part of the project are as follows:

• *Salix lasiolepis* and *Salix sitchensis* (willow trees) will be the predominate plant species used in the restoration project. The plant material will be grown using cuttings from existing willows at the site and willows currently growing at the extreme western end of Calera Creek.

• *Scripus microcarpus*, *Juncus balticus* and *Scrophularia californica* will be planted in the creek channel.

• *Baccharis pilularis*, *Mimulus aurantiacus* and will be planted in areas with insufficient water to support willow trees.

• *Baccharis pilularis*, *Artemisia californica*, *Festuca californica* and *Juncus patens* will be planted in the bioswale.

2. Key personnel involved in SEP

The City of Pacifica's Public Works Department in conjunction with a private land restoration contractor (as yet to be determined) will develop and implement the Rockaway Creek West of Highway 1 Restoration.

3. Plans to continue and/or maintain the SEP beyond the SEP-funded period

The cost of the initial maintenance until the vegetation is established or a minimum of two years is included in the total cost of the project.

4. Documented Support for the SEP

N/A

Project Milestones and Budget:

The City of Pacifica will fund the Rockaway Creek West of Highway 1 Restoration in the amount of $170,000. The project milestones and estimated budget are as follows:

Project Milestones

Task	Timeline	Estimated Cost
Permits	May 1st – Jul 1st , 2011	$5,000
Design Consultant	Jul 1st – Jul 30th , 2011	$15,000
Mobilization	Sept 5th – Sept 6th , 2011	$5,000
Plant salvage/clear and grub	Sept 7th – Sept 13th, 2011	$10,000
Rough grading, creek	Sept 14th – Sept 16th, 2011	$12,000
Rough grading, bioswale	Sept 19th – Sept 22nd, 2011	$6,000
Install breakwater	Sept 26th – Sept 28th, 2011	$10,000
Finish grade, creek	Sept 29th – Oct 5th, 2011	$15,000
Finish grade, bioswale	Oct 6th – Oct 10th , 2011	$6,000
Bank stabilization/erosion control	Oct 11th – Oct 19th, 2011	$30,000
Temporary irrigation	Oct 21st – Oct 26th, 2011	$10,000
Willow staking and planting	Oct 26th – Oct 31st, 2011	$16,000
Maintenance	Minimum 2 years, Nov 2013	$30,000
Total		$170,000.00

ATTACHMENT D

Project Performance Measures:

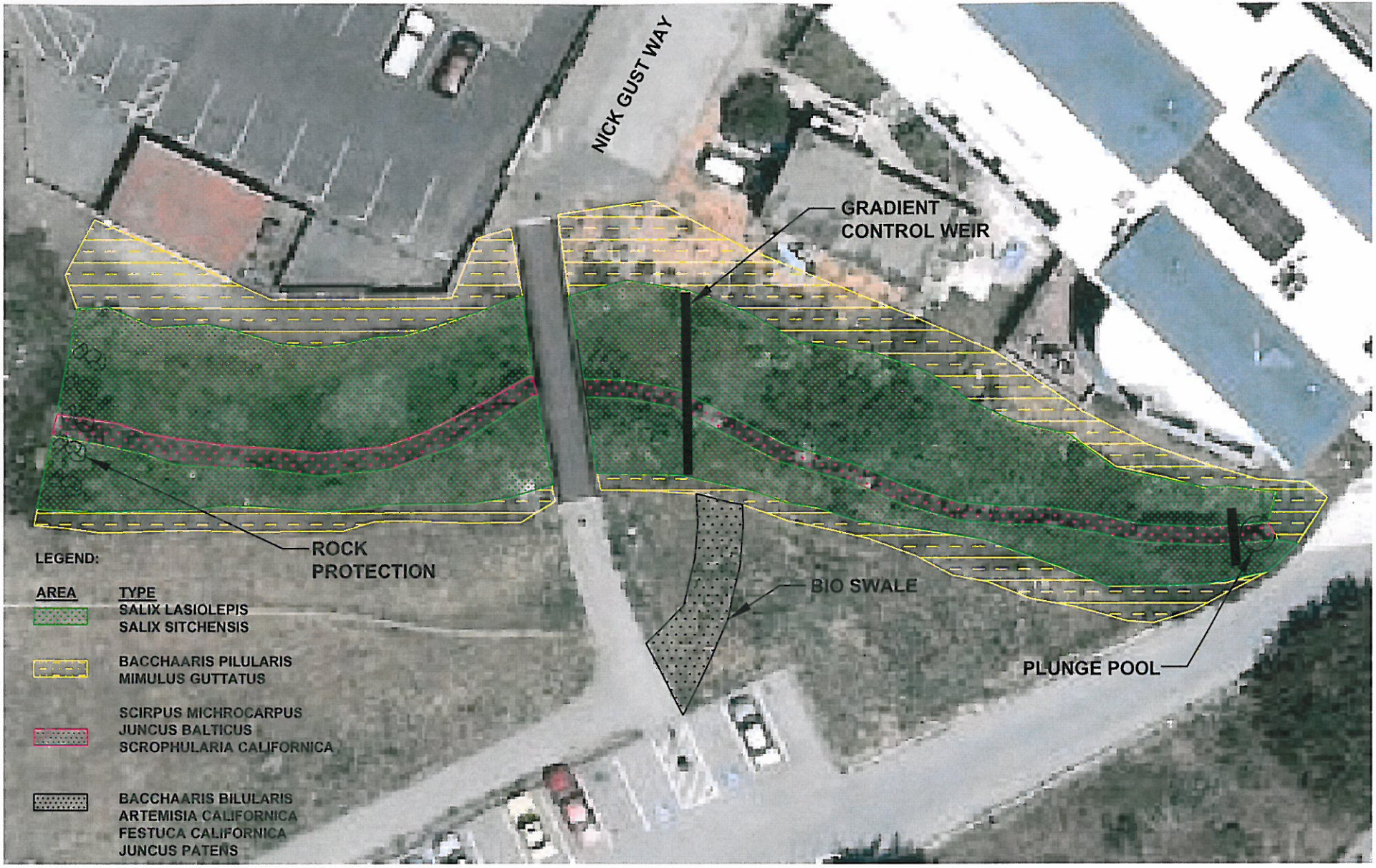
The City of Pacifica will monitor the new plantings and perform the required maintenance to achieve a 90% plant survival rate. Monitoring and maintenance will be done monthly for the first six months and four times a year thereafter until the native plants have become established. Established means a dense canopy of native plants that functions to prevent, or keep in check, invasion by non-native plant species.

Reports to the Water Board:

The City of Pacifica will notify the Regional Water Board upon commencement of the project and will provide quarterly reports (each January 31st, April 30th, July 31st, and October 30th) to the Regional Water Board, a third party oversight organization, and the State Water Board's Division of Financial Assistance to until the native plants have become established and the temporary irrigation system has been removed. On November 30, 2013, the City will provide a final report to the Regional Water Board, the SF Estuary Partnership, and the State Water Board's Division of Financial Assistance documenting completion of the SEP, and addressing how performance measures were met, along with a copy of accounting records of expenditures. If an additional year is needed for planted species to become established, the City will indicate this in its quarterly report of September 30, 2013, and continue to submit quarterly reports until November 30, 2014, when it submits a final report.

Third Party Oversight Organization:

San Francisco Estuary Partnership
1584343.3



CITY OF PACIFICA

PUBLIC WORKS / ENGINEERING DIVISION

DESIGNED BY: AC
DRAWN BY:
CHK'D BY:
APPROVED BY:

REV.	DATE	DESCRIPTION	BY

REVISIONS

ROCKAWAY CREEK RESTORATION PLAN

SITE PLAN

SCALE:

PLAN NO.

ATTACHMENT E

Project Name: City of Pacifica Extensive Private Sewer Lateral Grant Program

Project Developed by: City of Pacifica

Project to be Performed by: City of Pacifica

Contact: Brian Martinez, Collection System Manager
City of Pacifica
700 Coast Hwy.
Pacifica, Ca. 94044
Telephone: (650) 738-4669
Fax: (650) 355-5721
Email: martinezb@ci.pacifica.ca.us

Compliance with SEP Criteria:

1. Benefit to Water Quality and Beneficial Uses

The City's Extensive Private Sewer Lateral Grant Program will reduce inflow and infiltration (I/I) into the City's collection system from defective private sewer laterals. A reduction in I/I will benefit surface water quality and beneficial uses by decreasing the number and volume of spills of untreated or partially treated sewage from the City's collection system to surface waters during wet weather. In addition, the program will reduce the number and volume of spills to surface waters from private laterals.

2. SEP is not an Obligation of Discharger

The City is not required to develop, implement or fund the Extensive Private Sewer Lateral Grant Program by any permit or order or any local, state or federal law, nor has this program been previously contemplated as a City funded program or included in prior City budgets.

3. No Fiscal Benefit to Water Board

The Extensive Private Sewer Lateral Grant Program does not provide any fiscal benefit to the Water Board's functions, its members or its staff.

4. Nexus Between Violation and SEP

A nexus exists between the City's spill violations and the Extensive Private Sewer Lateral Grant Program because repair or replacement of defective laterals

will reduce the amount of I/I in the City's collection system, thereby reducing the likelihood of future wet weather spills from the City's collection system. In addition, repair or replacement of defective laterals will reduce the number of private lateral spills and their related consequences.

Description of Project:

1. The goal(s) of the SEP and detailed plans for achieving the goal(s)

The goal of the Extensive Private Sewer Lateral Grant Program is (1) to reduce the rate of I/I in the City's collection system and the number and volume of private lateral spills by incentivizing homeowners to repair or replace their defective private sewer laterals; and (2) to focus the City's efforts in areas with the greatest I/I from laterals. The City intends to achieve these goals by making grant funds available for lateral repair/replacement in such a way as to accomplish the performance measure standard described in the following section. These funds will be allocated to fund or subsidize the repair or replacement of defective laterals in basins or locations that are determined by the City's Master Plan and condition assessment program to have the highest levels of I/I from lateral sewers. A description or map showing these high I/I basins will be provided in the first quarterly report due to the Regional Water Board and updated and/or revised as necessary in each subsequent quarterly report.

City staff will conduct closed-circuit television inspections of private laterals in those areas that are determined by the City's Master Plan and condition assessment program to have the highest levels of I/I from lateral sewers. In addition, when the City replaces a main in a basin that has been identified as having high I/I from laterals, the City will inspect all of the laterals connected to the main scheduled for replacement.

If the City's inspection identifies a defect in a private lateral, the City will notify the homeowner of the defect, direct the homeowner to repair or replace the lateral within a certain period of time, and provide the homeowner with a list of contractors with whom the City has previously negotiated a fixed or per-unit price. The homeowners will have the option of using one of the contractors on the City's list or a contractor of their choice. Upon the contractor's satisfactory completion of the work, the City will reimburse the homeowner in an amount deemed appropriate by the City to achieve the performance measure described below.

2. Key personnel involved in SEP

The City's collection system staff will develop and implement the Extensive Private Sewer Lateral Grant Program.

3. Plans to continue and/or maintain the SEP beyond the SEP-funded period

N/A

4. Documented Support

N/A

Project Milestones and Budget:

The City will fund the Extensive Private Sewer Lateral Grant Program in the amount of $820,000. The program will include the following milestones:

June1, 2011 – The City will develop outreach program informing homeowners about the Private Sewer Lateral Grant Program. The City, in its outreach material or website in publicizing the Program, shall state in a prominent manner that it is being partially funded as part of the settlement of an enforcement action by the Regional Water Board against the City.

August 1, 2011 – The City will implement outreach program

September 1, 2011 – Submit report to Regional Water Board on implementation of outreach program

The City shall submit quarterly status reports as further described below in the section entitled “Reports to the Regional Water Board” on or before the following dates:

October 20, 2011
January 20, 2012
April 20, 2012
July 20, 2012
October 20, 2012
January 20, 2013
April 20, 2013
July 20, 2013
October 20, 2013
January 20, 2014
April 20, 2014
July 20, 2014
October 20, 2014
January 20, 2015
April 20, 2015
July 20, 2015
October 20, 2015

January 1, 2016 - Submit final report and certification of completion as further described in the Settlement Agreement for this matter

The City will maintain a monthly accounting of grant funds.

Project Performance Measures:

The City will measure the success of the Private Sewer Lateral Grant Program by tracking the number, length, location, and cost of repairs/replacements of defective private laterals. Suspension of $820,000 in administrative civil penalty shall occur after successful completion of the program that equates to the satisfactory repair or replacement of a total of 482 defective private sewer laterals and compliance with the SEP provisions in the Settlement Agreement for this matter, which include the requirement that the City demonstrate that it has expended a minimum of $820,000 to implement the SEP project. If the program results in a lesser number of private laterals repaired or replaced, the suspended amount shall be the lesser of (a) the amount that the City can demonstrate that it has expended to implement the SEP, including but not limited to, funds spent by the City on public outreach, inspections of private laterals, or grants to homeowners or (b) the following:

Minimum # of laterals repaired/replaced	Suspended Amount
382	$650,000
287	$487,500
191	$325,000
96	$162,500

The difference between $820,000 and the suspended amount shall be paid by the City to the State Cleanup and Abatement Account.

Reports to the Regional Water Board:

The City will provide a quarterly progress report to the Regional Water Board's designated representative (the San Francisco Estuary Partnership) and the Division of Financial Assistance of the State Water Board in accordance with the schedule set forth in the Project Milestones and Budget section above. Each report shall include a table showing a running tally of the number and length of laterals inspected, whether work was required on the inspected laterals, the number and length of laterals repaired or replaced, the street address locations for each lateral videoed/inspected and repaired/replaced, the month and date the work was completed, the amount of grant funds expended on each lateral, and the amount of grant funds remaining. The quarterly reports shall also include summaries of outreach conducted and copies of any supporting materials for the program.

ATTACHMENT E

The City will provide a final report and certification of completion in accordance with the Settlement Agreement for this matter.

Third Party Oversight Organization:

San Francisco Estuary Partnership

1592148.1

ATTACHMENT F

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

REVISED TENTATIVE CEASE AND DESIST ORDER NO. R2-2011-XXX
REQUIRING THE

CITY OF PACIFICA
CALERA CREEK WATER RECYCLING PLANT AND COLLECTION SYSTEM
in SAN MATEO COUNTY

TO CEASE AND DESIST DISCHARGING WASTE
IN VIOLATION OF REQUIREMENTS IN
REGIONAL WATER BOARD ORDER NO. R2-2006-0067
(NPDES PERMIT NO. CA 0038776)
AND
STATE WATER BOARD ORDER NO. 2006-0003-DWQ

WHEREAS the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Regional Water Board), finds that:

1. The City of Pacifica (hereinafter Discharger) operates a domestic wastewater treatment plant called the Calera Creek Water Recycling Plant (WWTP) located at 700 Coast Highway, Pacifica, San Mateo County. The WWTP and associated upstream sanitary sewer wastewater collection system operates under Order No. R2-2006-0067 (NPDES No. CA0038776) and was previously subject to WDR Order No. 99-066 from September 15, 1999, until October 31, 2006, as amended by Order No. R2-2002-0088 on September 18, 2002. The collection system is also subject to State Water Resources Control Board (State Water Board) Order No. 2006-0003-DWQ *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* (Sanitary Sewer Order) and State Water Board Order No. WQ-2008-0002-EXEC, *Adopting Amended Monitoring and Reporting Requirements for the Sanitary Sewer* Order (SSO MRP Amendment).

2. The WWTP serves a population of approximately 39,000, with 82 miles of gravity sewers, 50 miles of lower laterals of which the Discharger is responsible for, and 4.2 miles of force mains. There are five sewage pump stations with a total pumping capacity of 34,000 gallons per minute (49 mgd).

3. On October 23, 2009, the Regional Water Board issued Administrative Civil Liability Complaint (Complaint) No. R2-2009-0075 to the Discharger, seeking $2,300,000 in liability. The Complaint was issued to address alleged violations of the California Water Code (CWC) that include numerous sanitary sewer overflows (SSOs) and bypass violations reported by the Discharger from its collection system and

WWTP for the period of December 2004 through June 2009, including substantial discharge events in January 2008, as well as numerous smaller collection system spills and one larger spill in 2004 that are detailed in Table A of the Complaint.

4. The alleged SSOs and bypass violations occurred as a result of the Discharger's failure to adequately identify and address collection system problems. Specifically, the Discharger could have undertaken detection and elimination of excessive collection system inflow and infiltration (I&I). I&I corrective measures could have avoided: (1) the collection system surcharging and the resultant spills; and (2) the WWTP process bypass.

5. On January 25, 2008, more than 100,000 gallons of raw sewage was discharged from various points in the WWTP collection system. On January 25 and 26, 2008 the Discharger bypassed approximately 6,900,000 gallons of partially treated sewage to surface waters. These discharge events occurred during heavy rains in January 2008 when high inflow and infiltration of storm water into the collection system resulted in flows exceeding the Discharger's collection system design capacity and WWTP process capacity. The remaining SSOs were primarily caused by blockages due to roots and debris.

6. Provisions C.1 and C.2 of the Sanitary Sewer Order prohibit any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States, or creates a nuisance as defined in CWC § 13050(m). In addition, Provisions D.3 and D.8 of the Sanitary Sewer Order require the Discharger to take all feasible steps to eliminate SSOs and to properly manage, operate, and maintain all parts of the collection system.

7. Similarly, Order No. R2-2008-0067 (NPDES Permit No. CA0038776), prohibits, in Section III.D, "[a]ny sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States…" and requires the Discharger, in Attachment G, *Federal Standard Provisions*, to "at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of this Order."

8. The SSO MRP Amendment establishes monitoring, record keeping, reporting and public notification requirements for the Sanitary Sewer Order.

9. The Discharger's efforts to identify and eliminate I&I from its collection system have been inadequate. The sources of I&I (building and roof drains, illicitly connected stormwater drainage systems, poorly sealed

manholes, leaky pipe joints and cracked, leaking or broken pipes) are most commonly detected by doing a comprehensive sewer system evaluation survey. This may involve smoke testing, TV inspections of sewer lines, in-line flow measurements during dry and wet rainy seasons, visual inspection of manholes, mainlines and lower laterals, and system computer modeling to adequately characterize and identify I&I sources. The Discharger has not conducted such a comprehensive sewer system evaluation survey since the early 1980s.

10. The Discharger has failed to develop and implement an adequate collection system rehabilitation and replacement program to identify and prioritize system deficiencies and implement rehabilitation actions to address deficiencies. Failure to identify and eliminate I&I into the collection system threatens to cause future SSOs, including discharges of untreated/partially treated sewage into surface waters in violation of the Water Code, the Discharger's NPDES Permit, and the Sanitary Sewer Order.

11. The number of SSOs due to root blockages from the Discharger's collection system per 100 miles of pipeline (Root SSO Rate) is high. In 2008 and 2009, the Discharger's Root SSO Rate was 20.6 and 10.3, respectively. This rate is above the median Root SSO Rate of 2.0 and 3.0 for all San Francisco Bay Region collection systems with greater than 100 miles of pipeline in 2008 and 2009, respectively. All SSO rates and comparative metrics stated above are dynamic and based solely on certified SSO data entered by dischargers into CIWQS.

12. The Discharger's efforts to eliminate the high number of SSOs due to root blockages from its collection system have been inadequate. The Discharger has failed to implement an effective Root control program. As a result, there is a continuing threat of future SSOs to surface waters in violation of the Water Code, the Discharger's NPDES Permit, and the Sanitary Sewer Order.

13. The CWC §13301 authorizes the Regional Water Board to issue a Cease and Desist Order when it finds that a discharge of waste is taking place, or threatening to take place, in violation of requirements or discharge prohibitions prescribed by the Regional Water Board or State Water Board.

14. CWC §13267 authorizes the Regional Water Board to require any person who discharged, discharges, or is suspected of having discharged or discharging, within its region, to furnish technical or monitoring program reports in connection with any action relating to any requirement authorized by Division 7 of the CWC.

15. This Cease and Desist Order (Order) requires the Discharger to submit

reports and technical information pursuant to CWC §13267. The reports and technical information required herein are necessary to assess system management and implementation of necessary corrective measures to reduce and eliminate SSOs and associated violations and to ensure compliance with this Order. The burden, including costs, of the reports required by this Order bear a reasonable relationship to the need for the reports and the benefits obtained therefrom.

16. This Order is an enforcement action and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code § 21000 et seq.) in accordance with California Code of Regulations § 15321.

17. The Regional Water Board notified the Discharger and interested persons of its intent to consider adoption of this Order, and provided an opportunity to submit written comments and appear at a public hearing. The Regional Water Board, in a public hearing, heard and considered all comments.

18. Any person adversely affected by this action of the Regional Water Board may petition the State Water Board to review the action. The petition must be received by the State Board Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100, within 30 days of the date which the action was taken. Copies of the law and regulations applicable to filing petitions will be provided upon request.

19. The requirements in the Order are intended to meet or exceed requirements contained in the Sanitary Sewer Order and the SSO MRP Amendment. To the extent that this Order conflicts with the Sanitary Sewer Order and the SSO MRP Amendment, this Order supersedes and controls (See Sanitary Sewer Order Provision D. 2.(iv)). This Order does not, however, relieve the Discharger of any of its obligations to comply with the Sanitary Sewer Order and the SSO MRP Amendment in situations where that requirement is not in conflict with or controlled by a more specific requirement in this Order.

IT IS HEREBY ORDERED, in accordance with Water Code §§13301 and 13267, that the Discharger shall cease and desist from discharging and threatening to discharge wastes, in violation of State and Regional Water Board orders and shall comply with the following provisions of this Order:

I. Operations and Maintenance (O&M) Program

1. SSO Reduction Plan. By June 1, 2011, the Discharger shall prepare an SSO Reduction Plan. The SSO Reduction Plan shall include (i) an analysis of historical SSOs (location, cause, maintenance history, and associated CCTV

data), (ii) review of existing maintenance activities and practices, and (iii) recommendations for changes to sewer cleaning methods, tools, and schedules to reduce the frequency of SSOs to, at a minimum, the SSO Performance Standards specified in Section VI of this Order. By June 30, 2011, the Discharger shall implement the recommendations in the SSO Reduction Plan, and shall periodically review and revise the strategy implemented as appropriate and necessary to achieve, at a minimum, the SSO Performance Standards specified in Section VI of this Order. Such review and revision shall be reported in the SSO Annual Reports and maybe also be taken in conjunction and coordination with review and revision of the Discharger's Sanitary Sewer Management Plan (SSMP) that is required in the Sanitary Sewer Order and in Section VIII of this Order.

2. SSO Record Keeping. The Discharger shall meet the record keeping requirements outlined in the SSO MRP Amendment, including but not limited to the following:

a. Maintain individual SSO records for a minimum of five years from the date of the SSO (SSO MRP Amendment Provision B.1);

b. Make all records available for review upon State or Regional Water Board staff's request (SSO MRP Amendment Provision B.3); and

c. Retain records of all SSOs, such as, but not limited to: service call records and complaint logs of calls received by the Discharger, SSO calls, SSO records, steps that have been taken and will be taken to prevent the SSO from recurring and a schedule to implement those steps, work orders, work completed, and a list and description of complaints from customers or others from the previous 5 years (SSO MRP Amendment Provision B.5).

The Discharger's SSO records may be audited by the Regional Board to determine if Discharger is in compliance with SSO Performance Standards contained in Section VI of this Order.

3. Computerized Maintenance Management System. By June 1, 2011, the Discharger shall purchase a Computerized Maintenance Management System (CMMS). The CMMS shall be used in conjunction with the Discharger's GIS database to track and make readily available to relevant Discharger's employees and contractors information concerning SSO history, sewer line cleaning, and other information necessary to plan system operation and maintenance and capital improvements. By September 1, 2011, the Discharger shall begin full use of the CMMS for SSO-related activities, including logging and tracking incoming SSO complaints, generating SSO-related work orders, and scheduling gravity, force main and pump station maintenance activities.

The Discharger's CMMS data records may be audited by the Regional Board to determine if Discharger is in compliance with SSO Performance Standards contained in Section VI of this Order.

4. System-Wide Cleaning Program. By July 30, 2011, the Discharger shall develop and implement an enhanced system-wide cleaning program for the collection system and its ancillary equipment that details all cleaning activities scheduled for gravity, pump stations and ancillary equipment as deemed necessary to prevent future SSOs. The cleaning program shall include (i) preventive cleaning of problem gravity sewer segments (SSO hot spots) including "lower laterals" maintained by the Discharger, to prevent recurring SSOs, (ii) an initial system-wide proactive cleaning of all gravity sewers, pump stations and ancillary equipment within the next 3 years, (iii) condition-based proactive cleaning of all gravity sewers with a cleaning cycle not to exceed 10 years for any specific gravity sewer, and (iv) cleaning activities including visual and CCTV inspections to be scheduled and tracked via the CMMS by the Discharger.

5. Root Control Program. By October 30, 2011, the Discharger shall develop and implement an enhanced root control program. The root control program shall utilize cleaning results and CCTV inspection data to identify gravity sewers with significant root intrusion and shall control root intrusion in those gravity sewers with significant levels of root intrusion using mechanical root removal and/or chemical root control.

6. Illicit Discharges Elimination Program. The Discharger shall develop and implement a program to detect and eliminate illicit discharges. By December 31, 2011, the Discharger shall complete and document results of smoke testing of the portions of its collection system identified in the System Evaluation and Capacity Assurance Plan (discussed in greater detail below in Paragraph 8) as having the most significant I&I and as being most appropriate for smoke testing. The Discharger shall require private property owners to eliminate illegal drainage connections or defective laterals and will eliminate any inappropriate cross-connections in Discharger owned facilities identified during smoke testing.

By November 15, 2011, the Discharger shall adopt an ordinance, or amend existing ordinances, to provide the Discharger with the requisite authority to eliminate illicit discharges and shall take reasonable enforcement efforts under said ordinance(s) to eliminate identified illicit discharges. The Discharger shall take reasonable enforcement actions against any violators and maintain records to document any such enforcement actions.

7. Condition Assessment. By March 1, 2013, the Discharger shall complete a condition assessment of 100% of its collection system including forced mains. The condition assessment shall be based on closed circuit television (CCTV) inspection and employ a system for ranking the condition of sewer pipes that meets National Association of Sewer Service Companies (NASCO), or other

industry-accepted standards. The Discharger shall use the results of the CCTV inspection and condition assessment to identify and prioritize collection system deficiencies requiring repair, rehabilitation or replacement and shall incorporate identified sewer repair, rehabilitation and replacement projects into the CIP (defined below) based on the ranking and resulting prioritization. The Discharger shall develop and implement a schedule for reinspection of all gravity and forced main sewer lines based on the condition of such lines.

II. System Evaluation and Capacity Assurance Plan

8. By October 15, 2011, the Discharger shall complete a System Evaluation and Capacity Assurance Plan (SECAP). The SECAP shall be developed in accordance with Provision D. 13(viii) of the Sanitary Sewer Order and comply with the following requirements:

(a) The SECAP shall evaluate the performance of the Discharger's collection system under existing and future dry weather and wet weather flows.

(b) The SECAP shall identify basins within the Discharger's collection system with the most extensive I&I.

(c) The SECAP shall identify any bottlenecks in the collection system which lack sufficient capacity to convey sewage flows through the collection system and to the WWTP during peak wet weather conditions. The SECAP shall identify any areas where increases in pipeline size, I&I reduction programs, increases and redundancy in pumping capacity, and additional storage facilities are needed using commercially available hydraulic computer modeling designed specifically to evaluate collection system hydraulic flow and capacity.

(d) The SECAP shall include a hydraulic analysis that includes calculation for all sewer lines and all pump stations of estimated dry weather wastewater flow and estimated peak wet weather wastewater flow. Findings of the hydraulic analysis shall be presented on a GIS system map or other database.

(e) The SECAP shall identify projects to eliminate any identified capacity deficiencies and to reduce I&I.

(f) The SECAP must be reviewed and approved by a professional engineer registered in the State of California.

III. Capital Improvement Plan

9. The Discharger shall prepare and implement a Capital Improvement Plan (CIP) based to the extent possible on the results of the condition assessment

conducted pursuant to Paragraph 7 of this Order and the SECAP, required above in Paragraph 8. The CIP shall be developed in accordance with Provisions D.13(iv)(c) and D.13(viii)(c) of the Sanitary Sewer Order.

a) By October 15, 2011, the Discharger shall complete an initial CIP ("Initial CIP") that includes (i) projects identified in the SECAP to address capacity deficiencies, (ii) projects identified in the SECAP to reduce I&I, and (iii) repair, rehabilitation or replacement projects identified to address collection system deficiencies in those portions of the collection system for which the Discharger has conducted a condition assessment. The Initial CIP shall be included in the SECAP and shall include a schedule for implementing the projects contained in the Initial CIP.

b) The Discharger shall implement the Initial CIP in accordance with the schedule contained therein.

c) By January 31, 2014, the Discharger shall complete an updated CIP (Updated CIP) and schedule. The Updated CIP shall include any additional repair, rehabilitation or replacement projects identified to address collection system deficiencies in those portions of the collection system for which a condition assessment had not been completed as of the date of the Initial CIP.

d) The Discharger shall implement the Updated CIP in accordance with the schedule contained therein.

e) The Discharger shall update the schedules in the Initial CIP and Updated CIP as project implementation occurs and priorities change to meet established goals and to ensure proper management of infrastructure assets. The Discharger shall provide such updates as appropriate in its annual SSO Reduction Action Plan required in Paragraph 11 below.

(f) The Discharger shall annually prepare a report tracking implementation of the CIP to be submitted with the SSO Annual report. This CIP tracking report shall indicate the status of all projects listed in the Initial CIP and Updated CIP.

IV. Financial Plan

10. By November 1, 2011, the Discharger shall develop a 10-year Financial Plan and by November 1, 2014, a 20-year Financial Plan. Each shall evaluate (i) the costs of implementing the tasks required by the Sanitary Sewer Order and this Order; (ii) current and projected future financial resources available to implement such tasks; and (iii) whether the Discharger's current wastewater rates need to be increased to ensure adequate financial resources to implement such tasks. The Discharger shall provide periodic updates and/or amendments

to these financial plans as necessary to achieve the tasks required by the Sanitary Sewer Order and this Order.

V. Private Sewer Service Lateral Program

11. The Discharger shall develop and implement a private service lateral replacement program to reduce the addition of I&I from defective private service laterals. By November 15, 2011, the Discharger shall present to its city council for adoption an ordinance requiring (a) testing of private sewer service laterals (portion of a lateral from the building foundation to the property line, or in some cases extending to the sewer main line that the private property owner is responsible for maintaining) upon sale of property, a major remodel (>$75,000), and any remodel that adds a bathroom or significant plumbing fixture; (b) replacement of defective private sewer service laterals by a specified deadline; and (c) evidence from landowner that defective private sewer service lateral has been repaired, rehabilitated, or replaced as condition to closing or the Discharger's sign-off on a permit.

VI. SSO Performance Standards

12. The Discharger shall achieve at a minimum the SSO Performance Standards outlined in Table A below.

13. To minimize the volume of SSOs, the Discharger shall maintain a response time of no greater than 30 minutes during business hours, and a response time of no greater than 60 minutes during non-business hours from the time the Discharger becomes aware of an SSO to the time it has response crews arrive on scene to begin appropriate response actions to protect public health and the environment (e.g., containment, cessation, cleanup, recovery, notification and reporting).

14. By January 1, 2019, the Discharger shall have no insufficient capacity-caused SSOs. By January 1, 2020 the Discharger shall achieve full compliance with Prohibitions C.1 and C.2 of the Sanitary Sewer Order, which prohibit any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States, or creates a nuisance as defined in CWC § 13050(m). Should the Discharger fail to achieve full compliance with these requirements, then the Discharger shall submit an SSO Compliance Report no later than the 30 days after the above deadline that (1) addresses why compliance was not achieved, (2) provides sufficient information concerning the specific circumstances of the SSO event/s for the Regional Board to consider excusing those discharges in accordance with any applicable regulations or guidance documents[1], (3) asserts and provides supporting evidence for any

[1] At the time this CDO is being issued, the United States EPA is considering developing a standard permit condition that would provide a framework for evaluating the specific circumstances of overflows from a municipal sanitary sewer collection system that result in a discharge to waters of the U.S. and consideration of those circumstances to excuse those discharges, either through the exercise of enforcement discretion or through

pertinent affirmative defenses and (4) provides a plan and time schedule for achieving compliance as soon as possible.

Table A. SSO Performance Standards

Calendar Year	Maximum Number of SSOs Annually
2011	15
2012	14
2013	13
2014	12
2015	10
2016	9
2017	8
2018	7
2019	6
2020	See Provision VI. 14 above

VII. Training

15. By October 30, 2011, the Discharger shall complete an assessment of the competency of its collection system staff and develop a plan to provide training to collection system operation and maintenance (O&M) personnel. The training assessment and program shall include but not be limited to the following:

a) The Discharger shall assess all collection system O&M personnel (from line staff through supervisor) to determine current abilities and compare against the actual technical skill sets needed to competently perform collection system O&M duties. The assessment shall be based on the personnel's current needs as compared to what the personnel can actually do and is expected to do per the job description.

b) Based on the results of the assessment, the Discharger shall identify deficiencies and make the appropriate adjustments to job descriptions and/or training plan for each collection system O&M personnel.

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establishment of an affirmative defense. (Federal Register (June 1, 2010) Vol. 75, No. 104.) In determining compliance with Paragraph 14, the Regional Board will consider any exceptional circumstances or affirmative defenses raised by the Discharger within the context of applicable guidance, rules, regulations, and statutes prior to exercising its enforcement discretion under this provision.

c) No later than November 1, 2011, the Discharger shall commence implementation of the training plan developed for each O&M personnel.

d) Training provided to O&M personnel shall include but not be limited to classroom, drills/practice of SSO response events including procedures for properly notifying, documenting and reporting all SSOs to comply with the Sanitary Sewer Order and SSO MRP Amendment , including but not limited to training to ensure proper documentation and reporting of SSO start time, ongoing SSO spill rate, SSO end time, estimation of SSO volume and amount recovered, and completion of proper documentation of all work activities related to SSO response and corrective action taken, workshops, online courses and self-paced courses.

e) The Discharger shall report on the progress of its training program in the Annual SSO Reports required by Paragraph 22 of this Order for calendar years 2012 through 2015, at a minimum.

VIII. SSMP Certification, Communication and Audit

16. Within 30 days of the effective date of this Order, a copy of the Discharger's current SSMP must be publicly available in the Discharger's office and posted on the Discharger's internet website.

17. Beginning July 1, 2011, the Discharger shall communicate on an annual basis with the public by placing information on the Discharger's website about the development, implementation and costs of its SSMP. The communication must provide the public the opportunity to provide input and comments to the Discharger as the SSMP is developed and implemented. The Discharger shall document its communication program in its SSMP.

18. By October 15, 2011, the Discharger shall revise and re-certify the SECAP element of the SSMP in CIWQS.

19. By September 1, 2012, the Discharger shall revise and re-certify the Operation and Maintenance Program element of the SSMP in CIWQS.

20. By December 31, 2012, the Discharger shall present the final revised SSMP to its City Council for approval at one or more public meetings. Within thirty (30) days after the Discharger's City Council approves the final revised SSMP, the SSMP must be publicly available in the Discharger's office and posted on the Discharger's internet website.

21. By January 1, 2017, and every five (5) years thereafter, the Discharger shall review, and update as necessary, its SSMP in accordance with Provision D.14 of the Sanitary Sewer Order. Each update shall be so noted in the SSO Annual Report for that calendar year.

22. By March 15, 2014, and every March 15 of each year thereafter, the Discharger shall conduct an annual audit of its SSMP covering the previous calendar year and electronically submit an SSMP Audit Report via the Regional Water Board's online SSO reporting system at www.wbers.net. During the Audit, the Discharger shall, at a minimum, review the following information:

a) Collection System Technical Information (SSO "hot spots," number of SSOs, number of preventable SSOs);

b) Financial Information to ensure the collection system has the financial resources to properly carry-out all SSMP elements;

c) Sewer Maintenance Procedures; and

d) Measurable Performance Measures.

The Discharger shall initiate/direct corrective actions to be taken whenever deficiencies are noted and SSMP improvements are needed. If/when significant changes are made to the SSMP, the Discharger shall update the SSMP in accordance with Provision D.14 of the Sanitary Sewer Order.

23. By March 15th of each year, the Discharger shall submit an Annual SSO Report covering the previous calendar year. As currently required by the Regional Water Board's 13267 letter dated November 15 2004, the Annual SSO Report shall: (1) summarize number, volume, general location and causes of SSOs during the reporting period, (2) summarize sewer system cleaning statistics for the entire system and for hot spots (i.e. number of miles cleaned per year and cleaning frequency), (3) perform a trend analysis showing a comparison of data for the current reporting period with previous years, and (4) provide a status of SSMP development. In addition, starting March 15, 2012, the Annual SSO Report shall include additional information so the Regional Water Board can evaluate ongoing compliance with this CDO. The additional information includes: (5) based on the trend analysis conducted, identify areas of concern in the collection system, (6) provide a list of actions to be taken over the next calendar year to address areas needing improvement including a list of needed capital improvement projects if applicable, (7) provide a list of any capital improvement projects completed during the reporting period to address areas of concern previously identified, (8) summarize actions taken over the previous calendar year and actions planned over the next calendar year to meet the SSO Performance Standards in Section VI of this Order and (9) document all training received by Discharger's employees during that reporting period in accordance with the Discharger's Training Program.

IX. Consequences of Non-Compliance

24. If the Discharger fails to comply with the provisions of this Order the Regional Board can take additional enforcement action, which may include the imposition of administrative civil liability pursuant to CWC sections 13331, 13350

and/or 13268, or referral to the Attorney General. The Executive Officer is authorized herein to refer violations of this Order to the Attorney General to take such legal action as he or she may deem appropriate.

X. Reservation of Enforcement Authority and Discretion

25. Nothing in this Order is intended to or shall be construed to limit or preclude the Regional Board from exercising its authority under any statute, regulation, ordinance, or other law, including but not limited to, the authority to bring enforcement against the Discharger in response to any SSO or bypass event regardless of Discharger's compliance with the Spill Performance Standards in Section VI herein.

XI. Regulatory Changes

26. Nothing in this Order shall excuse the Discharger from meeting any more stringent requirements that may be imposed hereafter by changes in applicable and legally binding legislation, regulations, or waste discharge requirements.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is full, true, and correct copy of an order adopted by the Regional Water Board, on _____ __, 2011.

_____
Bruce H. Wolfe
Executive Officer