

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

**COMPLAINT NO. R2-2014-1017
ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF**

**CONTRA COSTA COUNTY PUBLIC WORKS DEPARTMENT
255 GLACIER DRIVE
MARTINEZ, CA 94553-4825**

This complaint (“Complaint”) is issued under the authority of California Water Code (“Water Code”) section 13323 to the Contra Costa County Public Works Department (“Department”) to assess administrative civil liability pursuant to Water Code section 13385. The Complaint addresses an alleged discharge of rock fill into Green Valley Creek. The proposed liability for this alleged violation is \$10,000.

The Assistant Executive Officer of the San Francisco Bay Regional water Quality Control Board (“Regional Water Board”) alleges the following:

1. The Department is responsible for and performs several services for Contra Costa County including flood control maintenance through the Flood Control & Water Conservation District. The Department provides technical staff support for the Contra Costa County Flood Control & Water Conservation District, and it is responsible for drainage plans, financing, and flood control work.¹
2. The Department maintains approximately 75 miles of improved channels including Green Valley Creek.² It conducts flood control maintenance activities which include stabilizing creek banks, removing trees and accumulated sediment, and abating weeds and homeless encampments.
3. In October 2013, the Department performed maintenance in Green Valley Creek in Danville by filling a section of the creek with 49 tons of fill material consisting of riprap. The Department did not notify the Regional Water Board of its plan to place fill material or obtain Regional Water Board approval (401 Certification or permit) for its work. Regional Water Board staff discovered this discharge as part of its inquiries about the past maintenance activities by the Department. In response to the inquiries, the Department submitted information on December 19, 2013, listing work in stream channels on at least 77 other occasions from January 1, 2013, through October 15, 2013. These included some combination of vegetation removal, channel cleaning, channel repair, and/or removing sediment from stream channels.

¹ <http://www.co.contra-costa.ca.us/442/Flood-Control>

² <http://www.co.contra-costa.ca.us/445/Maintenance>

Applicable Requirements

4. Clean Water Act section 301 makes a permit, issued pursuant to regulations promulgated under section 404 of the Clean Water Act, a legal prerequisite to the discharge of fill into waters of the United States.
5. Water Code section 13376 prohibits the discharge of fill material, except as authorized by fill material permits.

Alleged Violations

6. The Department violated Clean Water Act section 301 and Water Code section 13376 by discharging 49 tons of fill material into Green Valley Creek, a water of the United States, in October 2013, without a permit issued pursuant to regulations promulgated under section 404 of the Clean Water Act. The discharge was not authorized by the State, either through a Clean Water Act section 401 certification or a fill material permit.

Statutory Liability

7. The Department is liable civilly under Water Code section 13385(a)(1) for violation of Water Code section 13376, and under Water Code section 13385(a)(5) for violation of Clean Water Act section 301. Water Code section 13385(c) authorizes the Regional Water Board to impose administrative civil liability for violations of section 13385, in an amount not to exceed the sum of both of the following: (1) \$10,000 for each day in which the violation occurs; and (2) where there is a discharge, \$10 per gallon for any portion of the discharge that is not cleaned up exceeding 1,000 gallons. Alternatively, the Regional Water Board may refer such matters to the Office of the Attorney General for prosecution and seek up to \$25,000 per day of violation and \$25 per gallon discharged in excess of 1,000 gallons pursuant to Water Code section 13385(b).

Maximum Administrative Civil Liability

8. Pursuant to Water Code section 13385(c)(1) and (2), the maximum administrative civil liability that may be assessed by the Regional Water Board is \$73,300. The discharge occurred on one day and the volume discharged and not cleaned up was 7,330 gallons, as discussed in Exhibit A.

Proposed Liability

9. The Assistant Executive Officer proposes that administrative civil liability be imposed in the amount of \$10,000. This proposed penalty is consistent with the State Water Board Enforcement Policy, as described in Exhibit A (incorporated herein by this reference).

Notifications

10. This Complaint is issued pursuant to Water Code section 13323.
11. The Department may waive its right to the scheduled hearing and pay the recommended administrative civil liability.

12. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including, but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal, and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.
13. There are no statutes of limitation that apply to administrative proceedings. The statutes of limitation that refer to “actions” and “special proceedings” and are contained in the Code of Civil Procedure apply to judicial proceedings, not administrative proceeding. (See *City of Oakland v. Public Employees’ Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, Section 405(2), p. 510.)
14. Notwithstanding the issuance of this Complaint, the Regional Water Board and/or the State Water Board shall retain the authority to assess additional penalties against the Department for violations for which a liability has not yet been assessed or for violations that may subsequently occur.
15. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, Title 14, section 15321.
16. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.

Dyan C. Whyte
Assistant Executive Officer

September 23, 2014

Date

Attachments: Exhibit A: Factors Considered in Determining Administrative Civil Liability