

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

SETTLEMENT AGREEMENT
AND MUTUAL RELEASE
FOR
COMPLAINT NO. R2-2009-0043

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
UNAUTHORIZED DISCHARGES OF WASTEWATER
SAUSALITO-MARIN CITY SANITARY DISTRICT

This Settlement Agreement for Administrative Civil Liability Complaint No. R2-2009-0043 (this "Agreement") is made and entered into by the Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region, ("Regional Water Board") and the Sausalito-Marin City Sanitary District (the "District") (collectively referred to as the "Parties") with reference to the following facts:

RECITALS:

- A. On June 11, 2009, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R2-2009-0043 (Attachment A). The Complaint alleged that there were two unauthorized discharge events of partially treated wastewater from the District's wastewater treatment plant (Plant) and one sanitary sewer overflow (SSO) caused by the District's failure to properly maintain and operate its sanitary sewer collection system (collection system). The unauthorized discharge violations occurred February 15 through February 21, 2009, and on February 27, 2009. The SSO violation occurred August 10, 2008. The discharge events and SSO violated Regional Water Board Order No. R2-2003-0109. The Complaint proposed that the District pay penalties in the amount of \$332,000.
- B. The Discharger subsequently provided the Assistant Executive Officer with additional evidence.
 - a. The District provided evidence to show that it was reasonable to assume that the volume of the February 15-21, 2009, unauthorized discharge was less than 764,500 gallons rather than the amount alleged in the Complaint. The evidence was included in a report dated July 21, 2009, and consisted of supplemental data and analysis of influent and effluent flow volumes. The District contended that the Complaint's estimate of spill volume was based on an inaccurate assumption which was that the spill started at a point in time when there was an observable difference between influent and effluent flow volumes. The new evidence submitted by the District indicates that the change in the hourly flow observed between the influent

and effluent flow data could have resulted from either the spill or a natural variation in flow patterns caused by a wet weather event that occurred days prior to discovery of the spill on February 17. The District asserted that the evidence shows that it is reasonably possible that the spill did not start as early as previously alleged, and thus the total volume spill was actually less than the originally estimated volume.

- b. The District presented evidence that it contended supported its position that the proposed penalty amount should be reduced:
 1. The Discharger provided the Assistant Executive Officer with additional evidence to demonstrate that the Discharger proactively and cooperatively worked with the Marin County Environmental Health Services Division (EHS) staff to sample and mitigate the spill effects and to post precautionary closure signs along beach areas during the discharge event. (Letter from EHS to Assistant Executive Officer dated July 15, 2009).
 2. The Discharger submitted a report dated July 23, 2009, to comply with Condition 4 of Cleanup and Abatement Order No. R2-2009-0011 (CAO). The CAO required the Discharger to cleanup and abate the effects of the February 15-21, 2009, spill and to evaluate all of its wastewater treatment and collection system facilities that pose a threat of discharge of wastes into waters of the State and a threat to create a condition of pollution and nuisance. The report submitted by the Discharger comprehensively assessed and presented a detailed analysis of its short-term and long-term capital improvement needs. The report presented information that was above and beyond the CAO requirements.
- C. The Regional Water Board's Prosecution Team reviewed the evidence submitted by the Discharger and reconsidered the factors under CWC Section 13385(e) for the February 15-21, 2009, SSO. The Prosecution Team and the Discharger agree that based on the evidence submitted the spill was lower than that alleged in the Complaint and was approximately 630,000 gallons. Further, the Prosecution Team and the Discharger agree that the penalty should be reduced in light of the District's proactive actions to address the effects of the spill and to limit public exposure through its work with Marin County Health officials. Additionally, the parties agreed that the penalty should be lower because the District went above and beyond the requirements imposed by the Board's CAO. The District identified its capital improvement needs to abate the threat of discharge of wastes into waters of the State and the threat create a condition of pollution and nuisance.

- The District is also planning to determine the revenue requirements to fund these needs.
- D. The Parties have reached this settlement for the violation alleged in the complaint. This settlement is subject to public comment as provided below.
- E. The Parties agree that full compliance with this Agreement constitutes settlement of all claims arising out of the alleged violation specified in Complaint No. R2-2009-0043.
- F. The general terms of the settlement are that the District will pay a total penalty of \$258,000 as follows:
- a. The District will pay administrative civil liability of \$139,000 to the State Water Resources Control Board's Cleanup and Abatement Account.
 - b. In lieu of the remaining \$119,000 penalty, the District agrees to complete a Supplemental Environmental Project (SEP) at a cost of not less than \$119,000 towards a project to install piping and vaults for the Marine Mammal Center seal rehabilitation pools, as described in Attachment B. The SEP is described in Attachment B and includes a schedule for implementation. The District will comply with the specific terms and conditions described in Attachment B, which is incorporated into this Agreement. Any information produced by the District concerning the SEP shall indicate that the SEP is being performed in fulfillment of the settlement of an enforcement action with the Regional Water Board. Further, the District shall require that the Marine Mammal Center agree that if the Marine Mammal Center indicates on any signs or written materials that the District was the source of funding for the project, such signs or written materials shall indicate that the SEP is being performed in fulfillment of the settlement of an enforcement action with the Regional Water Board.
- G. As a material condition of this Agreement, the District represents and warrants that the SEP is not and was not previously contemplated, in whole or in part by the District for any other purpose except to partially satisfy the District's obligations in settling the violation alleged in Complaint No. R2-2009-0043. The District further warrants that its contributions to the project that serves as the SEP would not be made in the absence of this enforcement action.
- H. Subject to the qualifications set forth in paragraph 8 below, the Assistant Executive Officer has the authority to settle this matter in accordance with Water Code section 13323 and Government Code section 11415.60. The District's representative signing this Agreement confirms that s/he has the authority to bind the District to the terms of this Agreement.

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

1. Both Parties agree to comply with the terms and conditions of this Agreement.
2. The Parties agree that they will support, advocate for, and promote the proposed Administrative Civil Liability Order attached as Attachment C. The Parties further agree that they will not contest the proposed Administrative Civil Liability Order attached as Attachment C before the Regional Water Board, the State Water Resources Control Board or any court.
3. Paragraph 2 does not apply in the event that the Executive Officer or Regional Water Board considers adopting an order that differs in any substantial way from the proposed Administrative Civil Liability Order attached as Attachment C. In that event, the Parties will have full rights to a hearing as set forth in the Notice for this Proceeding.
4. The Assistant Executive Officer agrees that this settlement fully resolves the allegations in the Complaint and assesses civil penalties for all violations for the two unauthorized discharge events that occurred February 15 through February 21, 2009, and February 27, 2009, and for the SSO that occurred on August 10, 2008. The Assistant Executive Officer further agrees that once the Administrative Civil Liability Order in Attachment C is approved, not to pursue any further administrative or judicial action of any kind against the District for those discharges. The Regional Water Board maintains the ability to initiate other administrative or judicial enforcement actions against the District for spills that are not subject to this Agreement.
5. The District agrees to pay an administrative civil liability of \$139,000 to the Cleanup and Abatement Account in accordance with a payment plan described as follows: 50% of the administrative civil liability amount to be paid not later than 30 days following approval by the Regional Water Board or its Executive Officer of the settlement described in this Agreement together with the Order attached as Attachment C, and the remainder to be paid by June 30, 2010. If the District fails to comply with the terms of the payment plan, the entire amount shall be paid not later than 30 days following any such failure to comply. The payment obligation shall not accrue during the time in which any review is sought by any third party under Water Code sections 13320 or 13330. The District agrees to undertake an SEP for not less than \$119,000 and will comply with the specific terms and conditions in Attachment B.
6. Subject to Paragraph 5 above, in the event that any of the following occur, the District agrees to promptly pay an administrative civil liability amount of

\$119,000 (in addition to the amount of \$139,000 described in Paragraph 5 above) to the Cleanup and Abatement Account:

- a. The District determines that it does not wish to perform the SEP,
- b. The Executive Officer determines that the SEP is not being performed in accordance with the specified terms and conditions, including the time schedule detailed in Attachment B, or
- c. The Executive Officer determines that the proposed SEP does not qualify as a SEP in accordance with the State Water Resources Control Board's Enforcement Policy and another acceptable SEP proposal is not proposed to and approved by the Regional Water Board or the Executive Officer in a reasonable time frame.

Additionally, in the event that the SEP is completed but the District's expenditures are less than \$119,000, the District shall pay any remaining balance to the Cleanup and Abatement Account.

7. The Parties understand that this settlement and the proposed Administrative Civil Liability Order attached as Attachment C must be noticed for a 30-day public review period. In the event that objections are raised during the public comment period for the proposed Administrative Civil Liability Order, the Regional Water Board or the Board's Executive Officer may, under certain circumstances, require a public hearing regarding the proposed Administrative Civil Liability Order. In that event, the Parties agree to meet and confer in advance of the public hearing concerning such objections, and may agree to revise or adjust the Agreement as necessary or advisable under the circumstances.
8. In the event that this Agreement does not take effect because the Executive Officer and/or other Regional Water Board does not approve the attached Administrative Civil Liabilities Order, or the Order is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions, except this Agreement, will not be admissible as evidence in the hearing; however, nothing in this Settlement Agreement precludes either party from presenting documentary evidence or testimony at the hearing which it previously presented during the settlement discussions.
9. The Parties agree that in the event that the Regional Water Board does not approve a settlement of this matter, they waive any and all objections related to their attempt to settle this matter, including but not limited to objections related to

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

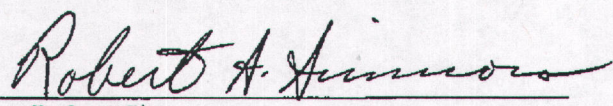
18. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

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

California Regional Water Quality Control Board
San Francisco Bay Region

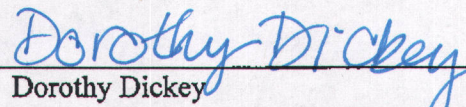
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Dyan C. Whyte
Assistant Executive Officer

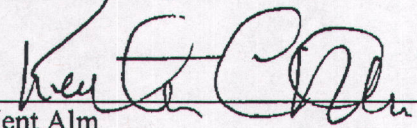
Sausalito Marin-City Sanitary District

By: 
Robert Simmons
District Manager

Date: October 14, 2009

APPROVED AS TO FORM:

By: 
Dorothy Dickey
Counsel for Regional Water Board

By: 
Kent Alm
Counsel for Sausalito Marin-City Sanitary District

List of Attachments

Attachment A: ACL Complaint R2-2009-0043

Attachment B: Supplemental Environmental Project

Attachment C: ACL Tentative Order