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Secretary for  
Environmental Protection

# California Regional Water Quality Control Board San Diego Region

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October 6, 2008

**Certified Mail**  
**7007 0710 0000 5763**

Mr. Tom Rosales  
General Manager  
South Orange County Wastewater Authority  
34156 Del Obispo Street  
Dana Point, California 92629

In reply refer to:  
CAU:01-0175  
Place IDs: 257592, 257518,  
704670

Dear Mr. Rosales:

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINTS NO. R9-2008-0090,  
R9-2008-0091, R9-2008-0092, R9-2008-0093, and R9-2008-0094  
FOR ADMINISTRATIVE CIVIL LIABILITY FOR MANDATORY MINIMUM PENALTIES  
UNDER WATER CODE SECTION 13385, VIOLATION OF ORDERS  
NO. R9-2006-0054 AND R9-2000-13, NPDES NO. CA0107417**

This letter addresses comments received to date from South Orange County Wastewater Authority (SOCWA), South Coast Water District (SCWD), and Santa Margarita Water District (SMWD) directly in response to Administrative Civil Liability (ACL) Complaints No. R9-2008-0091 and R9-2008-0093 and indirectly to ACL Complaints R9-2008-0090, R9-2008-0092, and R9-2008-0094, all of which were issued to SOCWA by the California Regional Water Quality Control Board, San Diego Region (Regional Board), on August 14, 2008.<sup>1</sup>

First, as previously noted, the hearing dates for ACL Complaints No. R9-2008-0090, R9-2008-0091, R9-2008-0092, and R9-2008-0094 are tentatively scheduled for the November 12, 2008 Regional Board meeting. However, ACL Complaint No. R9-2008-0093 is hereby withdrawn as described below.

<sup>1</sup> Comments include a letter from SOCWA and SCWD dated September 17, 2008, a letter from SCWD dated September 24, 2008, and emails from SMWD on September 10 and 24, 2008.

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### **ACL Complaint No. R9-2008-0093, SCWD Groundwater Recovery Facility**

#### ACL Complaint No. R9-2008-0093 will be Reissued.

SCWD reported that the Groundwater Recovery Facility (GRF) has generated additional violations subject to mandatory minimum penalties (MMPs) subsequent to the violations listed in ACL Complaint No. R9-2008-0093. SCWD has also reported that it is starting to implement a plan to sewer the GRF effluent which would fully resolve the ongoing violations by December 2008. Because of the additional violations and pending resolution, it is appropriate to re-issue a single Complaint that includes the violations in the original Complaint and all new violations up to the date the discharge is terminated. Consequently, ACL Complaint No. R9-2008-0093 is hereby withdrawn. The Regional Board will notify SOCWA when the revised Complaint with the additional violations will be reissued. At this time, I expect the reissued Complaint will be issued in the near future.

#### Mandatory Minimum Penalty Exemptions Requested by SOCWA and SCWD.

By letter dated September 17, 2008, SOCWA and SCWD requested that numerous violations be exempted from MMPs. The violations that occurred during the startup mode at the GRF do not qualify for exemptions under California Water Code (CWC) Section 13385 (j)(1)(D). To qualify for this exemption, the SCWD would have been required to submit to the Regional Board, at least 30 days in advance of the start of facility operation, an operations plan that describes the actions the discharger will take during the period of adjusting and testing. Our records show that no operations plan was submitted prior to or during the facility's start up mode. CWC 13385(j)(1)(D) also states that this exemption shall not exceed 30-days for non-biological treatment facilities. In SOCWA's letter, dated September 17, 2008, the startup period for the GRF was June 2007 to February 2008, over 270 days. This is substantially much more than the exemption allows.

Similarly, the violations at the GRF that have and continue to occur since July 10, 2008 do not qualify for any exemption. CWC Section 13385 does not contain any exemption from MMPs, based solely on a discharger's plan to cease discharging wastewater that has pollutant concentrations in violation of effluent limitations without first obtaining a time-schedule order or cease and desist order from the Regional Board. Such orders, however, cannot include retroactive milestones, so there can be no retroactive cutoff date for violations subject to MMPs.

Violations as a result of the discharge from the GRF will continue being subject to the MMPs under CWC Section 13385 (h) and (i) as long as the GRF continues to discharge to the San Juan Creek Ocean Outfall under Order No. R9-2006-0054. The discharger has the option to discontinue its groundwater operation until full and permanent compliance can be achieved.

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### **Proposed Supplemental Environmental Project**

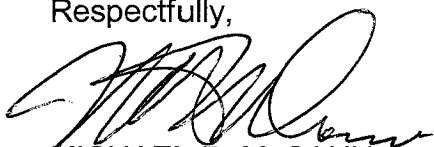
The Supplemental Environmental Project (SEP) proposal that was submitted by SCWD on September 24, 2008 fails to contain sufficient information to be recommended for approval to the Regional Board. CWC Section 13385 (l) establishes that when a penalty amount exceeds fifteen thousand dollars, the portion of the penalty amount that may be directed to be expended on a SEP may not exceed fifteen thousand dollars plus fifty percent of the penalty amount that exceeds fifteen thousand dollars. SCWD proposes directing \$51,000 to a SEP, which is nearly the entire \$57,000 recommended in the GRF Complaint. SCWD does not identify which of the other ACL Complaints are involved, the start and finish dates of the project, and the total budget for the project. After October 6, 2008, the Regional Board prosecution team will no longer recommend the Regional Board accept additional SEP proposals for Complaints scheduled for hearings on November 12, 2008. A SEP proposal, however, may be presented to the Regional Board at the November 12, 2008 hearings.

### **ACL Complaint No. R9-2008-0091, SMWD Chiquita Water Reclamation Plant**

SOCWA and SMWD have not provided enough evidence to demonstrate that a single operational upset (SOU), as defined under CWC Section 13385 (f)(2), occurred at the Chiquita Water Reclamation Plant on December 26, 2006 and January 1, 2007. The SOUs were not reported as required in Order No. R9-2006-0054, Section VII.M.2. The SOUs were also not reported in the December 2006 and January 2007 Monthly Monitoring Reports. Furthermore, the letter from SMWD dated September 24, 2008 fails to include information consistent with U.S. Environmental Protection Agency guidance on interpreting SOUs. For instance, it does not explain the source of the high flows, how the high flows caused an upset, how the upset was unavoidable and exceptional, and does not provide remedies for any potential high flows in the future. As a result, each violation cited in ACL Complaint No. R9-2008-0091 is appropriately subject to MMPs pursuant to CWC Section 13385(h) and (i).

If you have any questions concerning this matter, please contact Joann Cofrancesco at (858) 637-5589/ [JCofrancesco@waterboards.ca.gov](mailto:JCofrancesco@waterboards.ca.gov) or Jeremy Haas at (858) 467-2735/ [jhaas@waterboards.ca.gov](mailto:jhaas@waterboards.ca.gov).

Respectfully,



MICHAEL P. McCANN  
Assistant Executive Officer

*California Environmental Protection Agency*

Mr. Tom Rosales  
SOCWA  
ACL Complaints

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MPM:mja:bdk;jh;jlc

**cc: [via email only]:**

Brian Kelley, Core Regulatory Unit, San Diego Regional Water Quality Control Board  
Ken Greenberg, U.S. Environmental Protection Agency, Region IX  
Michael Dunbar, South Coast Water District  
Betty Burnett, South Coast Water District  
Dan Ferons, Santa Margarita Water District  
Pat Chen, Miles Chen Law Group  
Reed Sato, State Water Board, Office of Enforcement  
Jorge Leon, State Water Board, Office of Enforcement

Related Regulatory Measure IDs: 349598, 349601, 349604, 349607, 349609