

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

***Tentative* ORDER NO. R9-2010-0025**

**IMPOSING  
ADMINISTRATIVE CIVIL LIABILITY  
PURSUANT TO SETTLEMENT AGREEMENT  
AGAINST  
COUNTY OF SAN DIEGO  
FOR ALLEGED VIOLATIONS OF  
ORDER NO. R9-2007-0001  
NPDES NO. CAS0108758**

**WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES OF URBAN RUNOFF  
FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s) DRAINING  
THE WATERSHEDS OF THE COUNTY OF SAN DIEGO, THE INCORPORATED  
CITIES OF SAN DIEGO COUNTY, THE SAN DIEGO UNIFIED PORT DISTRICT, AND  
THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY**

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) has been presented with a proposed settlement of claims for administrative civil liability against the County of San Diego (County). The settlement was developed during negotiations between the San Diego Water Board's Prosecution Staff and the County. This Administrative Civil Liability (ACL) Order and the attached Settlement Agreement (Agreement) resolve the violations alleged in ACL Complaint R9-2009-0089 through the payment of an administrative civil liability in the amount of \$57,350. The ACL Complaint specifically alleged violations of the San Diego County-wide Storm Water Waste Discharge Requirements, Order No. R9-2007-0001 (Order).

In accepting the proposed settlement, the San Diego Water Board has considered each of the factors prescribed in Water Code section 13385, as set out more fully below. The San Diego Water Board's consideration of these factors is based upon information obtained by the San Diego Water Board in investigating the claims or otherwise provided to the San Diego Water Board, including the information and comments received from the public.

A Notice of Proposed Settlement has been published in the San Diego Union-Tribune, a paper of general circulation in the San Diego area, notifying the public of the review period and soliciting public comments on the terms of the settlement. The proposed settlement supports the assessment of the administrative civil liability in the amount of \$57,350 for the full and final resolution of each of the claims and alleged violations set forth herein, and is in the public interest.

The following represents a summary of the facts and alleged violations as they appear in the files of the San Diego Water Board.

**HAVING PROVIDED PUBLIC NOTICE OF THE PROPOSED SETTLEMENT FOR PUBLIC COMMENT, THE SAN DIEGO WATER BOARD FINDS:**

1. Failure to Provide Adequate Legal Authority to Achieve Full Compliance with the Order  
The County violated Order No. R9-2007-0001 Provision D.2.a.(1) on March 24, 2008, when it amended its storm water ordinance on March 12, 2008, by changing the definition of "Rainy Season" from "October 1 through April 30" to "November 11 through April 30" contrary to Order No. R9-2007-0001's definition of "October 1 through April 30 of each year." On August 5, 2009, the County corrected the definition by amending its ordinance. Therefore, the days of violation are 498 (March 24, 2008, to August 4, 2009).
2. Failure to Require Construction Site BMPs During the Wet Season  
The County violated Order No. R9-2007-0001 Provision D.2.c.(3) by failing to require "slope stabilization on all inactive slopes during the Rainy Season" from October 1, 2007, to November 10, 2007, and from October 1, 2008, to November 10, 2008. The Director's Letter of Instruction states that "[d]uring the Non-Rainy Season from May 1 through November 10, the Developer may opt to employ 'weathered triggered' action plans<sup>1</sup> in lieu of fully deployed BMPs." As a result, the County allowed Developers to leave inactive slopes unprotected from October 1 to November 10 in 2007 and 2008, if the Developer implemented a "weather triggered" action plan. Therefore, the days of violation are 80 (October 1 to November 10, 2007, and October 1 to November 10, 2008).
3. Failure to Inspect Construction Sites During the Wet Season  
The County violated Order No. R9-2007-0001 Provision D.2.d.(1-3) by failing to inspect construction sites during the Wet Season from October 1, 2007, to November 10, 2007, and from October 1, 2008, to November 10, 2008, because the County's inspection frequencies were based upon the County's Wet Season and therefore didn't begin until November 11. Therefore, the days of violation are 80 (October 1 to November 10, 2007, and October 1 to November 10, 2008).
4. Administrative Civil Liability Authority  
The San Diego Water Board may impose civil liability pursuant to Water Code section 13385(a)(2) for any person who violates any waste discharge requirement issued pursuant to Water Code Chapter 5.5.

Furthermore, Water Code section 13385(c) provides that the San Diego Water Board may impose administrative civil liability pursuant to Article 2.5 of Chapter 5 in an amount not to exceed the sum of both of the following:

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<sup>1</sup> A "weather triggered" action plan allows the developer to store on site 125% of the necessary BMP materials that are to be deployed within 48 hours of a 50% chance or greater rain event of 0.5 inches or more.

- (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 discharge but not cleaned up exceeds 1,000 gallons.

The San Diego Water Board alleges that the County violated the Waste Discharge Requirements of Order No. R9-2007-0001. Therefore the San Diego Water Board is authorized to impose civil liability pursuant to Water Code section 13385(a)(2).

5. Maximum Civil Liability Amount

Pursuant to Water Code section 13385 the maximum civil liability that the San Diego Water Board may assess for this matter is ten thousand dollars (\$10,000) per day of violation. Section 13385(e) requires that when pursuing liability under Water Code section 13385 "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."

The County allegedly failed to provide adequate legal authority to achieve full compliance with the Order from March 24, 2008, through August 4, 2009, a total of 498 days. Therefore the maximum liability that the San Diego Water Board could assess for this violation is \$4.98 million.

The County allegedly failed to require construction site BMPs during the Wet Season from October 1 to November 10, 2007, and October 1 to November 10, 2008, a total of 80 days. Therefore the maximum liability that the San Diego Water Board could assess for this violation is \$800,000.

The County allegedly failed to inspect construction sites during the Wet Season from October 1 to November 10, 2007, and October 1 to November 10, 2008, a total of 80 days. Therefore the maximum liability that the San Diego Water Board could assess for this violation is \$800,000.

Accordingly, the total maximum liability that could be imposed by the San Diego Water Board for all of the alleged violations is \$6.58 million.

5. Factors Affecting the Amount of Civil Liability

The San Diego Water Board's consideration of the factors prescribed in Water Code section 13385(e) is based upon information available to the San Diego Water Board prior to the hearing and described in greater detail in the Technical Analysis for Complaint No. R9-2009-0089 or otherwise provided to the San Diego Water Board. The consideration of factors supports the assessment of civil liability in the amount of \$57,350. In addition to these factors, this settlement

recovers the San Diego Water Board's cost totaling \$20,929 for the duration of this enforcement action.

6. Settlement Agreement

The San Diego Water Board finds that the Recitals set forth in the Settlement Agreement for Complaint No. R9-2009-0089 are true. This Order and the incorporated Settlement Agreement are severable; should any provision be found invalid the remainder shall remain in full force and effect.

7. Notification of Interested Parties

The San Diego Water Board notified the County and interested parties of its intent to consider the proposed settlement during its meeting of April 14, 2010. The San Diego Water Board, in a public meeting, heard and considered all comments related to the proposed settlement.

8. Other Parties' Right to Petition

Any person aggrieved by this action of the San Diego Water Board may petition the State Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Board must *receive* the petition by 5 p.m., thirty (30) days after the date of this ACL Order, except that if the thirtieth (30<sup>th</sup>) day following the date of this ACL Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Board by 5 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions can be found on the Internet at [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality/index.shtml](http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml) or will be provided upon request.

9. California Environmental Quality Act

This enforcement action is being taken by the San Diego Water Board to enforce provisions of the Water Code and as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, section 15321.

**IT IS HEREBY ORDERED THAT:**

1. The San Diego Water Board imposes administrative civil liability against the County of San Diego in the amount of \$57,350.
2. The County shall submit a check to the San Diego Water Board for \$57,350 payable to the "State Water Pollution Cleanup and Abatement Account" within 30 days of the adoption of this Order.
3. The attached Settlement Agreement between the Assistant Executive Officer and the County of San Diego is approved pursuant to Government Code section 11415.60 and is incorporated by reference into this Order.

4. If the County fails to make the specified payment to the State Water Pollution Cleanup and Abatement Account within the time limits specified in this Order, the San Diego Water Board may enforce this Order, including referring the matter to the Attorney General for collection.

I, David W. Gibson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, San Diego Region on May 12, 2010.

TENTATIVE

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DAVID W. GIBSON  
Executive Officer

CIWQS:  
Place ID: 255223  
Party ID: 39617  
Regulatory Measure ID: 372074  
Violation ID: 799424, 799425, 799426