

Agenda Item No. 6

Supporting Document No. 5

Complaint No. R9-2011-0023 for Administrative Civil Liability

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

In the matter of:

**Santa Margarita Water District
Plano Force Main Sewer Spill to Tijeras
Creek and to the Pacific Ocean, Orange
County**

Place ID: 631542

**COMPLAINT NO. R9-2011-0023
FOR
ADMINISTRATIVE CIVIL LIABILITY**

**Violations of Order Nos.
2006-0003-DWQ and
R9-2007-0005, Waste Discharge
Requirements for Sanitary Sewer
Systems and Sewage Collection
Agencies in the San Diego Region,
collectively.**

March 10, 2011

SANTA MARGARITA WATER DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. Santa Margarita Water District (SMWD) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) may impose civil liability pursuant to section 13350 of the California Water Code (Water Code).¹
2. This Administrative Civil Liability Complaint is issued under authority of Water Code section 13323.

WASTE DISCHARGE REQUIREMENTS

3. SMWD owns and operates the Plano Lift Station and the associated 24-inch sewer main located adjacent to Antonio Parkway, Rancho Santa Margarita, California. SMWD is required to operate and maintain its sewage collection system in compliance with requirements of State Water Resources Control Board Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* and San Diego Water Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region*.
4. Prohibition C.1 of Order No. 2006-0003-DWQ states "Any SSO that results in the discharge of untreated or partially treated wastewater to waters of the United States is prohibited."

¹ While Water Code statutes allow for prosecution under section 13350 and/or section 13385, the San Diego Water Board has historically imposed civil liability associated with sewage spills under section 13350 except in cases of direct discharges to the Pacific Ocean.

5. Prohibition C.2 of Order No. 2006-0003-DWQ states "Any SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance as defined in California Water Code Section 13050(m) is prohibited."
6. Prohibition B.1 of Order No. R9-2007-0005 states "The discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant is prohibited."
7. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. Order No 2006-0003-DWQ and Order No. R9-2007-0005 are not NPDES permits.

VIOLATIONS SUBJECT TO THIS COMPLAINT

8. SMWD violated Prohibitions C.1 and C.2 of Order No. 2006-0003-DWQ, Prohibition B.1 of Order No. R9-2007-0005, section 301 of the Clean Water Act and Water Code section 13376 by discharging 2.293 million gallons of untreated sewage to Tijeras Creek, Arroyo Trabuco Creek, San Juan Creek and ultimately the Pacific Ocean, all waters of the State of California and waters of the United States, starting March 23, 2010 and ending March 30, 2010.
9. The details of these violations are set forth in full in the accompanying Technical Analysis, which is incorporated herein by this reference as if set forth in full.

MAXIMUM LIABILITY

10. Water Code section 13350 provides that any person who violates any waste discharge requirement issued by a Regional Water Board shall be civilly liable. Water Code section 13350(e)(2) provides that civil liability may be assessed on a per gallon basis, and may not exceed \$10 for each gallon of waste discharged.
12. Based on the discharge of 2,293,000 gallons of untreated sewage to Tijeras Creek, Arroyo Trabuco Creek, San Juan Creek and the Pacific Ocean, the total maximum liability under Water Code section 13350(e)(2) for this discharge is \$22,930,000.

MINIMUM LIABILITY

15. In the case of a discharge of pollutants, where no cleanup and abatement order is issued, Water Code section 13350(e) does not prescribe a minimum civil liability.

16. The Water Quality Enforcement Policy instructs the Regional Water Boards to assess liability against a violator at least 10 percent higher than the economic benefit realized from the violation so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.
17. As detailed in the incorporated Technical Analysis, and based on an economic benefit amount of \$667, the minimum liability amount the San Diego Water Board should assess is \$734.

PROPOSED LIABILITY

18. The amount of discretionary assessment proposed is based upon consideration of factors contained in Water Code section 13327. Section 13327 specifies the factors that the San Diego Water Board shall consider in establishing the amount of discretionary liability for the alleged violations, which include: the nature, circumstance, extent, and gravity of the violations, the ability to pay, the effect on ability to continue in business, prior history of violation, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
19. Based on the penalty calculation methodology in section VI of the Water Quality Enforcement Policy, it is recommended that the San Diego Water Board impose civil liability against the Santa Margarita Water District in the amount of \$1,731,970 for the discharge of untreated sewage to Tijeras Creek, Arroyo Trabuco Creek, San Juan Creek and the Pacific Ocean, from March 23 – 30, 2010. Attachment 1 provides a summary table of the decisions made in the methodology to determine the final liability amount.

Dated this 10th day of March, 2011,



JAMES G. SMITH

Assistant Executive Officer

Signed pursuant to the authority delegated
by the Executive Officer to the Assistant
Executive Officer.

Attachment: Penalty Methodology Decisions

CIWQS: Reg Measure ID: 377796
Place ID: 751027
Party ID: 39979
Violation ID: 865403

Step 1: Potential Harm Factor				
	Harm/Potential Harm to Beneficial Uses [0 - 5]	Physical, Chemical, Biological or Thermal Characteristics [0 - 4]	Susceptibility to Cleanup or Abatement [0 or 1]	Total Potential for Harm [0 - 10]
Violations				
Sewage Spill	4.5	3	0	7.5

Step 2: Assessments for Discharge Violations					
Violations	Per Gallon Factor				Statutory/ Adjusted Max per Gallon [\$]
	Potential for Harm [0 - 10]	Deviation from Requirement [minor, moderate, major]	High Volume Discharges	Total Per Gallon Factor	
Sewage Spill	7.5	major	yes	0.455	\$2.00

Step 3: Per Day Assessments for Non-Discharge Violations				
Violations	Per Day Factor			Statutory/ Adjusted Max [\$]
	Potential for Harm minor, moderate, major	Deviation from Requirement [minor, moderate, major]	Total Per Day Factor	
na	na	na	na	na

Step 4: Adjustments					
Violations	Culpability [0.5 - 1.5]	Cleanup and Cooperation [0.75 - 1.5]	History of Violations	Multiple Violations (Same Incident)	Multiple Day Violations
sewage spill	1	0.75	1.1	yes	na

Step 5: Total Base Liability Amount
Sum of Steps 1- 4
\$1,721,470

Step 8: Economic Benefit
\$697

Step 6: Ability to Pay/Continue in Business
[Yes, No, Partly, Unknown]
Yes

Step 9	
Minimum Liability Amount	Maximum Liability Amount
\$734	\$22,930,000

Step 7: Other Factors as Justice May Require	
Costs of Investigation and Enforcement Adjustment	Other
\$10,500	na

Step 10: Final Liability Amount
\$1,731,970