

State of California  
Regional Water Quality Control Board  
San Diego Region

ENFORCEMENT SUMMARY REPORT  
December 11, 2013

ITEM: 5

SUBJECT: Administrative Civil Liability: Settlement Agreement and Stipulation for Order, City of La Mesa (Tentative Order No. R9-2013-0137). Proposed settlement to resolve penalties for violations of the State Water Resources Control Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, and California Regional Water Quality Control Board, San Diego Region Order No. R9-2007-0005, Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region. (*Beatrice Griffey*)

PURPOSE: The San Diego Water Board will consider accepting a settlement agreement by adopting Tentative Order No. R9-2013-0137 (Tentative Order [Supporting Document 1]) to resolve, without formal administrative proceedings, all alleged violations set forth in Complaint No. R9-2012-0014 (Complaint [Supporting Document 2]). If the San Diego Water Board decides not to adopt the Tentative Order, the Prosecution Staff may re-open settlement discussions with the City of La Mesa or proceed with a contested evidentiary hearing at a future meeting before the San Diego Water Board to determine if it will assess administrative civil liabilities against City of La Mesa for the alleged violations.

RECOMMENDATION(S): The Prosecution Staff recommends adoption of Tentative Order No. R9-2013-0137. The Advisory Team will be available to answer questions and provide a recommendation to the San Diego Water Board for action on Tentative Order R9-2013-0137.

KEY ISSUES: Adoption of the Tentative Order (Supporting Document 1) will approve the terms of the settlement agreement to resolve the alleged violations described in the Complaint (Supporting Document 2). The Prosecution Staff asserts that the resolution of the alleged violations is fair, reasonable, fulfills its enforcement objectives, that no further

action is warranted concerning the alleged violations, and is in the best interest of the public.

DISCUSSION:

City of La Mesa located in south central San Diego County, approximately 9 miles to the northeast of the City of San Diego owns and operates 165 miles of sewer pipes. The City of La Mesa is required to operate and maintain the City's sewer collection system in compliance with the State Water Resources Control Board's Statewide General Water Discharge Requirements for Sanitary Sewer Systems (Order No. 2006-0003-DWQ) and the San Diego Water Board's Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region (Order No. R9-2007-0005).

Order No. 2006-0003-DWQ contains prohibitions for the discharge of untreated or partially treated wastewater to waters of the United States and/or that create a nuisance condition. Order No. R9-2007-0005 contains prohibitions for the discharge of sewage from a sanitary sewer system at any point upstream of the sewage treatment plant. The California Regional Water Quality Control Plan, San Diego Region (Basin Plan) contains a waste discharge prohibition for the discharge of treated or untreated sewage to waters of the state or to a storm water conveyance system. The Federal Clean Water Act (33 U.S.C. Section 1311) and the California 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.

According to the Complaint, from the morning of December 21, 2010 until the evening of December 22, 2010, approximately 1,314,700 gallons of untreated sewage discharged from the City of La Mesa's sewage collection system into Chollas Creek, San Diego Bay, Alvarado Creek, San Diego River, and the Pacific Ocean. Chollas Creek, San Diego Bay, Alvarado Creek, San Diego River, and the Pacific Ocean are all waters of the State of California and waters of the United States. None of the discharged sewage was recovered. Details of the sewage discharge are provided in the Complaint (Supporting Document 2).

The discharge of untreated sewage from the City of La Mesa's sewage collection system from the morning of

December 21, 2010 through the evening of December 22, 2010, as alleged, violated numerous applicable State and Federal environmental laws and State waste discharge requirements.

If adopted, the Tentative Order will impose a civil liability of \$801,462 (including staff costs) against the City of La Mesa and will resolve, without further administrative proceedings, all alleged violations as set for in the Tentative Order. Under the terms of the proposed settlement, within 30 days of adoption of the Tentative Order, the City of La Mesa will pay \$413,856 to the State Water Resources Control Board Cleanup and Abatement Account. The remaining \$387,606 in liability will be suspended upon the satisfactory completion of a Supplemental Environmental Project (SEP).

The proposed SEP, entitled Alvarado Channel Restoration, includes 900 linear feet of the Alvarado Channel bounded downstream by an existing flood control segment at 8765 Fletcher Parkway, and upstream by a box culvert near Alvarado Avenue.

The proposed SEP addresses 31,000 square feet of the Alvarado Channel and involves the removal of exotic/non-native vegetation, removal of 100 linear feet of concrete lining a portion of the channel bank, removal of trash, and revegetation with native riparian (22,000 square feet) and wetland (8,800 square feet) vegetation. Details of the SEP are presented in the Tentative Order (Supporting Document 1).

On November 22, 2013, the Advisory Team issued a letter to the City of La Mesa and the Prosecution Team requesting additional detailed information regarding the implemented SEP identification and selection process, and the proposed SEP (Supporting Document 3). Responses from the parties will be included in the supplemental agenda materials.

**LEGAL CONCERNS:**

None.

**SUPPORTING DOCUMENTS:**

1. Tentative Order No. R9-2013-0137
2. Complaint No. R9-2012-0014
3. Advisory Team's November 22, 2013 Letter to the City of La Mesa and the Prosecution Team.

PUBLIC NOTICE:

Notice of the Proposed Settlement, the San Diego Water Board's planned consideration of the Tentative Order, the amount of the proposed settlement, and the opportunity for public comment was sent electronically to known interested parties on October 25, 2013 and posted on the San Diego Water Board's website on October 29, 2013. Interested parties and the public were provided 30 days to submit comments to the San Diego Water Board. No comment letters were received.