

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R9-2014-0008
IN THE MATTER OF
CITY OF ESCONDIDO
HALE AVENUE RESOURCE RECOVERY FACILITY (HARRF)
SAN DIEGO COUNTY
RAW SEWAGE SPILL ON AUGUST 28, 2011

This Settlement Agreement and Stipulation for entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), on behalf of the San Diego Water Board Prosecution Team (Prosecution Team¹), and the City of Escondido (Discharger) (collectively known as the Parties) and is presented to the San Diego Water Board, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

Recitals

1. The Discharger is the owner and operator of approximately 381 miles of sewer pipe servicing roughly 53,848 service lateral connections and a population of 142,000 people. The untreated wastewater ultimately flows to the Hale Avenue Resource Recovery Facility (HARRF) for treatment and disposal.
2. The Discharger's sewage collection system is subject to the requirements set forth in State Water Resources Control Board (State Water 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 Systems in the San Diego Region*.
3. On August 28, 2011 the Discharger reported that due to a failure of the HARRF's influent pump station uninterruptable power supply (UPS), the influent pump ceased functioning, and the alarm system failed, causing a back-up and eventual discharge of raw sewage directly upstream of the HARRF facility. The discharge of raw sewage flowed directly into Escondido Creek, to San Elijo Lagoon and ultimately the Pacific Ocean, all of which are both waters of the State and United States.
4. The volume of the discharge was originally estimated by the Discharger to be 249,840 gallons. Subsequent analysis by the Discharger reduced the estimate of the volume to 180,700 gallons.

¹ The Prosecution Team in this matter includes staff from the San Diego Water Board and the State Water Resources Control Board, Special Investigations Unit.

5. On August 29, 2011, San Diego Water Board staff conducted an inspection of the discharge point and impacted surface waters. On November 11, 2011 the Discharger provided the San Diego Water Board with a voluntary report discussing the nature and circumstances of the sewage spill. Aided by the State Water Board Special Investigations Unit, the San Diego Water Board issued Notice of Violation No. R9-2013-0081 (NOV) and Request for Information pursuant to Water Code Section 13267 to the Discharger on April 29, 2013 for additional information related to the discharge. The Prosecution Team conducted a follow-up investigation on June 5, 2013. The Discharger provided a response to the Section 13267 Request for Information on June 7, 2013.
6. The discharge of raw sewage is a violation of Prohibition C.1 of State Water Board Order No. 2006-003-DWQ, which prohibits the discharge of untreated or partially treated wastewater to waters of the United States and Prohibition C.2 which prohibits the discharge of untreated or partially treated wastewater that creates a nuisance, as defined in California Water Code (CWC) Section 13050(m). The discharge of raw sewage is also a violation of San Diego Water Board Order R9-2007-0005, Section 301 of the Clean Water Act, CWC Section 13376, and the Water Quality Control Plan for the San Diego Basin (9) Waste Discharge Prohibitions Nos. 1 and 9.
7. On October 15, 2013, the Prosecution Team provided a pre-issuance settlement communication to the Discharger for alleged violations of State Water Board Order No. 2006-003-DWQ and San Diego Water Board Order R9-2007-0005 for the unpermitted discharge of raw sewage to Escondido Creek, San Elijo Lagoon, and the Pacific Ocean on August 28, 2011.
8. To resolve the alleged violations without formal administrative proceedings, the Parties engaged in confidential settlement negotiations and ultimately agreed to the final imposition of an administrative civil liability totaling \$133,927.

Regulatory Considerations

9. The San Diego Water Board may assess administrative civil liability based on CWC Section 13385 for such violations associated with the discharge of raw sewage to waters of the United States.
10. Water Code Section 13385(a)(5) states: "A person who violates any of the following shall be liable civilly in accordance with this section: (2) A requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the federal Clean Water Act (33 U.S.C. Sec. 1311, 1312, 1316, 1317, 1318, 1341, or 1345), as amended."

11. Water Code Section 13385(c) states: "Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following: (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 discharged but not cleaned up exceeds 1,000 gallons."
12. Water Code Section 13385(e) provides: "In determining the amount of any liability imposed pursuant under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. 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."

Settlement

13. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the San Diego Water Board for adoption as an order by settlement pursuant to Government Code section 11415.60. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein, and that this Stipulated Order is in the best interests of the public.
14. The Parties are agreeing to resolve this matter for \$133,927, which includes \$13,000 for the recovery of prosecution staff costs. A summary and full discussion of the penalty calculation factors the parties ultimately agreed upon and the consistency with the State Water Board *Water Quality Enforcement Policy* can be found in **Attachment A** and **Attachment B**, respectively which are incorporated herein by reference, as if they were set forth in full.

Stipulations

The Parties stipulate to the following:

15. Administrative Civil Liability: The Discharger hereby agrees to the imposition of an administrative civil liability totaling **one hundred thirty-three thousand, nine hundred twenty-seven dollars (\$133,927)**. Not more than 30 days after the entry of an Order approving this Settlement Agreement by the San Diego Water Board, the Discharger must pay by check to the State Water Board *Cleanup and Abatement Account* this amount. The Discharger shall indicate on the check the number of this Stipulation and Order (i.e. R9-2014-0008) and send it to the following address, with a copy of the check to the San Diego Water Board party contacts below.

State Water Resources Control Board
Division of Administrative Services, Accounting Branch
1001 I street, 18th Floor
Sacramento, CA 95814

16. Compliance with Applicable Laws: The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the NOV may subject it to further enforcement, including additional administrative civil liability.

17. Party Contacts for Communications related to Stipulated Order:

For the San Diego Water Board:

Chiara Clemente
San Diego Water Quality Control Board
2375 Northside Drive, Suite 100
San Diego, CA 92108
(619) 521-3371

Julie Macedo (Counsel)
Office of Enforcement
State Water Resources Control Board
1001 I Street, 16th Floor
Sacramento, CA 95812
(916) 323-6847

For the Discharger:

Christopher W. McKinney, P.E.
Director of Utilities, City of Escondido
201 North Broadway
Escondido, CA 92025

Adam Phillips (Counsel)
Deputy City Attorney, City of Escondido
201 North Broadway
Escondido, CA 92025

18. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
19. **Matters Addressed by Stipulation:** Upon the San Diego Water Board's adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of the violations alleged in the NOV, as well as any potential liability arising in connection with the reporting of the August 28, 2011 discharge. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Stipulation Paragraph 1 herein.
20. **Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the San Diego Water Board. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the San Diego Water Board for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the San Diego Water Board. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
21. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the San Diego Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
22. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or San Diego Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Stipulated Order. The failure of the Prosecution Team or San Diego Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.
23. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
24. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the San Diego Water Board.

25. If Order Does Not Take Effect: In the event that this Stipulated Order does not take effect because it is not approved by the San Diego Water Board, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the San Diego 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 will not be admissible as evidence in the hearing. The Parties agree to waive the following objections based on settlement communications in this matter:

- a. Objections related to prejudice or bias of any of the San Diego Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the San Diego Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the NOV in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

26. Waiver of Hearing: The Discharger has been informed of the rights provided by CWC section 13323(b), and hereby waives its right to a hearing before the San Diego Water Board prior to the adoption of the Stipulated Order.

27. Waiver of Right to Petition: The Discharger hereby waives its right to petition the San Diego Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

28. Covenant Not to Sue: The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any state agency or the State of California, its officers, board members, employees, representatives, agents, or attorneys arising out of or relating to any violation alleged herein.

29. San Diego Water Board is Not Liable: Neither the San Diego Water Board members nor the San Diego Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.


30. Authority to Bind: Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

31. **No Third Party Beneficiaries.** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
32. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the San Diego Water Board enters the Order.
33. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
San Diego Region

By:




James Smith
Assistant Executive Officer

Date:

11 Apr 2014

City of Escondido

By:



Christopher W. McKinney, P.E.
Director of Utilities

Date:


April 10, 2014

Attachment A: Enforcement Policy Penalty Methodology Table
Attachment B: Discussion of Penalty Calculation Factors

Pursuant to CWC sections 13323, 13350, 13385 and Government Code section 11415.60, **IT IS HEREBY ORDERED** by the California Regional Water Quality Control Board, San Diego Region:

1. In adopting this Stipulated Order, the San Diego Water Board or its delegee has considered, where applicable, each of the factors prescribed in CWC sections 13327, 13351 and 13385(e). The consideration of these factors is based upon information and comments obtained by the San Diego Water Board's staff in investigating the allegations concerning the discharges discussed herein or otherwise provided to the San Diego Water Board or its delegee by the Parties and members of the public.
2. This is an action to enforce the laws and regulations administered by the San Diego Water Board. The method of compliance with this enforcement action consists entirely of payment of an administrative penalty. As such, the San Diego Water Board finds that issuance of this Order is not considered subject to the provisions of the California Environmental Quality Act (CEQA) as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project" (Public Resources Code 21065, 21080(a); 15060(c)(2),(3); 150378(a), Title 14, of the California Code of Regulations). In addition, the San Diego Water Board finds that issuance of this Order is also exempt from the provisions of CEQA in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations as an enforcement action by a regulatory agency and there are no exceptions that would preclude the use of this exemption.
3. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the San Diego Water Board.
4. The San Diego Water Board's Executive Officer is hereby authorized to refer this matter directly to the Attorney General for additional enforcement if the Respondent fails to perform any obligations under the Order.

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, by and through its delegee, on 26 June, 2014.



DAVID W. GIBSON
Executive Officer

Date: 26 June 2014

Attachment A
Discharger: City of Escondido

Penalty Methodology Table
Stipulated Order No. R9-2014-0008

| Step 1: Potential Harm Factor | | | | |
|--------------------------------------|--|--|--|--|
| Violations | 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] |
| Sewage Spill | 3 | 3 | 1 | 7 |

| Step 2: Assessments for Discharge Violations | | | | | |
|---|----------------------------------|--|------------------------|-------------------------|--|
| Days of Violation | 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 | |
| 1 | 7 | major | yes | 0.31 | \$2.00 |

| Step 3: Per Day Assesments 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 | 1.2 | 0.8 | 1.1 | yes | na |

| Step 5: Total Base Liability Amount |
|--|
| Sum of Steps 1- 4 |
| \$120,927 |

| Step 8: Economic Benefit |
|---------------------------------|
| \$6,224 |

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

| Step 9 | |
|--------------------------|--------------------------|
| Minimum Liability Amount | Maximum Liability Amount |
| \$6,846 | \$1,807,000 |

| Step 7: Other Factors as Justice May Require | |
|---|-------|
| Investigative Costs | Other |
| \$13,000 | na |

| Step 10: Final Liability Amount |
|--|
| \$133,927 |

ATTACHMENT B

to Order No. R9-2014-0008

CITY OF ESCONDIDO

Hale Avenue Resource Recovery Facility (HARRF)
San Diego County

Discussion of Penalty Calculation Factors

The following summary of factors provides factual and analytical evidence to support the proposed Administrative Civil Liability (ACL) recommended penalty against the City of Escondido (City) for illegal discharge of sewage on August 28, 2011.

1.0 Discharger Information

The City provides wastewater collection (regulated under State Water Board Order No. 2006-003-DWQ and San Diego Water Board Order No. R9-2007-0005), wastewater treatment (regulated under NPDES Order No. R9-2010-0032) and ocean discharge (regulated under NPDES Order No. R9-2010-0086) for the City of Escondido and the Rancho Bernardo area of the City of San Diego. The City owns and operates the Hale Avenue Resource Recovery Facility (HARRF), a wastewater treatment plant located at 1521 Hale Avenue in the City of Escondido, San Diego County. The HARRF is an activated sludge, secondary treatment facility with an average daily flow of 16.5 million gallons.

2.0 Application of Water Board's Enforcement Policy¹

Pursuant to the penalty calculation methodology set forth in the Enforcement Policy, the following is a summary of the calculated monetary assessment for the illegal discharge of sewage to the waters of the United States that occurred on August 28, 2011.

SSO Violation and Analysis

Date: August 28, 2011

Alleged Cause of Sanitary Sewer Overflow (SSO): The HAARF influent pump station (IPS) shut down due to the component failure of the Uninterruptable Power Supply (UPS). The UPS unit provides power to the Programmable Logic Controller (PLC) that monitors/controls the operation of the influent pumps. The PLC is an electronic device that monitors/controls influent pump performance and network alarms to the Supervisory Control And Data Acquisition (SCADA) system. The resulting loss of power to the PLC caused the influent pump shutdown which led to a sewer backup and overflow upstream of the IPS, and therefore upstream of the treatment plant.

¹ Water Board's Enforcement Policy available at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/policy.shtml

SSO Event Description: The City reported that the UPS failed to provide power to the PLC unit at the IPS as well as its auto dial system connected to the SCADA. The City estimated that the SSO duration was 23 minutes based on SCADA data and hydraulic grade line analysis (taking into consideration freeboard capacities of wet well and pipelines).

Factor 1: Harm or Potential Harm to Beneficial Uses = 3

Moderate threat to beneficial uses (i.e. impacts are observed or reasonably expected and impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects)

- The discharge of raw sewage reached Escondido Creek, which has the beneficial uses of municipal and domestic supply (MUN); agricultural supply (AGR); hydropower generation (POW); contact water recreation (REC1); non-contact water recreation (REC2); warm freshwater habitat (WARM); cold freshwater habitat (COLD); and wildlife habitat (WILD).
- The Department of Environmental Health (County) posted warning signs at Cardiff State Beach because of reasonable expectation of contamination from the spill. The postings lasted several days.
- The City posted warning signs at public access points along Escondido Creek and San Elijo Lagoon.
- The City cleaned up/disinfected a wetted area around the Green Tree Mobile Home Estates storage area upgradient of the treatment plant.
- No cleanup/spill recovery occurred along Escondido Creek. Samples were collected along Escondido Creek by the City for bacteriological analysis, and results showed elevated contaminants both upstream and downstream of the spill source.
- Existing high levels of coliform in the creek challenge the ability to precisely determine the adverse effect of the spill.

Factor 2: Physical, Chemical, Biological or Thermal Characteristics of the Discharge = 3

An above-moderate risk or direct threat to potential receptors due to high levels of human pathogens, suspended solids, toxic pollutants, nutrients, oil, and grease, etc. in sewage.

Factor 3: Susceptibility to Cleanup of Abatement = 1

Less than 50 percent of the discharge was susceptible to cleanup or abatement.

Deviation from Requirement = Major

The requirement has been rendered ineffective.

- The City is in violation of numerous discharge prohibitions contained in Orders Nos. 2006-0003-DWQ and R9-2007-0005. While the City did not consciously disregard these requirements, the magnitude and duration of the spill to surface waters rendered the essential functions of the Discharge Prohibitions completely ineffective.

Volume Discharged, Gallons = 180,700 Gallons

- According to the City's April 29, 2013 response to the NOV/13267, the estimated discharge volume has been revised from 249,840 gallons to 180,700 gallons based on actual IPS testing and hydraulic grade line analysis.
- This new volume calculation was submitted and certified in CIWQS as of November 14, 2013.

High Volume Discharge = \$2 per gallon

- For large sewage discharges, page 14 of the Enforcement Policy allows the use of \$2.00 per gallon discharged. Where reducing the maximum amount results in an inappropriately small penalty, a higher amount, up to the maximum per gallon amount (\$10 per gallon), may be used. In this case the calculated penalty falls between the minimum and maximum liabilities available per the enforcement policy, provides a deterrent effect to the regulated community and is considered a reasonable penalty.

Per Gallon Assessment for Discharge Violations = \$111,414

Score based on (Per Gallon Factor) X (# gallons subject to penalty) X (adjusted per gallon penalty)
(0.310) X (179,700 gallons) X (\$2/gallon) = \$111,414

- Potential for Harm = 7 (i.e. sum of factors 1-3)
- Major Deviation
- Per gallon factor= 0.310 (Table 1, Page 14 of the Enforcement Policy)
- 179,700 gallons was used for penalty calculations (i.e. 180,700, less the first 1,000 gallons spilled and not cleaned up).
- Maximum penalty = \$10 per gallon discharged but not cleaned up, exceeding 1,000 gallons, per California Code section 13385(c)(2)
- Adjusted maximum penalty for high volume spills is \$2 per gallon.

Per Day Assessment for Discharge Violations = \$3,100

Score based on (Potential for Harm) X (Extent of Deviation from Requirement)
(\$10,000) X (0.310) = \$3,100

- Potential for Harm = 7 (i.e. sum of factors 1-3)
- Major Deviation
- Per day factor = 0.310 (Table 2, Page 15 of the Enforcement Policy)
- Maximum penalty = \$10,000 per day per California Code section 13385(c)(1)
- One day of violation

Initial Liability Amount = \$114,514

Per gallon assessment + per day assessment = Initial Liability Amount
(\$111,414) + (\$3,100) = \$114,514

Culpability = 1.2

The multiplying factor range is 0.5 to 1.5, where a higher multiplier is for intentional or negligent behavior.

- City installed “redundancy” system at the IPS by installing UPS unit for the PLC but failed to keep logs/records of preventive maintenance/testing of UPS/PLC/Alarm systems.
- City claimed that it replaced dry cell batteries of UPS unit but could not provide documentation/receipts of purchased dry cell batteries.
- As a mitigating factor, the City did provide an immediate response (operator was on duty at the time of spill); other operators/support personnel were at the scene to quickly cease the discharge of raw sewage to surface waters.

Cleanup and Cooperation = 0.8

The multiplying factor range is 0.75 to 1.5 where a lower multiplier is for a high degree of voluntary cleanup and cooperation.

- City performed cleanup and disinfection works on wetted areas around the Green Tree Mobile Home Estates (impacted areas of SSO source).
- City was proactive in returning to compliance by providing direct power supply to the PLC (UPS bypassed); increasing preventive maintenance on wet well level units (bubbler and floater); and installing smart covers to three manholes near the IPS.
- City posted warning signs during/after the SSO event to alert the public. Bacteriological samples were collected in coordination with the County Department of Environmental Health.
- City hired a technical consultant and submitted its technical report and other requested information on time.

History of Violations = 1.1

Where there is a history of violations, a minimum multiplier of 1.1 should be used.

- From 2003 to 2005, the City reported a total of 5 SSOs under Order No. R9-2007-0005 (ranging from 120 to 2,610 gallons).
- From 2007 to 2011, the City reported a total of 24 SSOs under Order No. 2006-003 (ranging from 5 to 180,700 gallons). Eleven were classified as Category 1 spills (i.e. greater than 1,000 gallons and/or reaching receiving waters).
- 10 additional smaller SSOs occurred after the August 28, 2011 SSO – (ranging from 20 to 809 gallons). Six of these spills were from private laterals, and none of the four public spills were in the vicinity of the August 28, 2011 discharge.
- None of the prior reported SSOs were caused by PLC failure.
- Other NPDES violations consist of three deficient monitoring reports, but no effluent violations.

Total Base Liability Amount = \$120,926.78

Initial liability X Culpability X Cleanup and Cooperation X History of Violations = Total Base Liability
 $\$114,514 \times 1.2 \times 0.8 \times 1.1 = \$120,926.78$

Ability to Pay = 1 (yes)

The City's Comprehensive Annual Financial Report (CAFR) for the Fiscal Year Ending June 30, 2012 indicates it has the potential ability to pay an ACL of up to at least \$500,000. The CAFR shows current assets as \$37,842,450, current liabilities as \$5,231,484, and current net assets as \$32,610,966.

Economic Benefit = \$6,224

The City's failure to maintain the UPS is estimated to have a cost savings of approximately \$1,000 per year. These cost savings occurred from 2006 to 2011. Using USEPA's model for calculating economic benefit (i.e. BEN model) this totals \$5,971. An additional \$253 in savings is estimated as the avoided cost of treating the spilled sewage, thereby totaling \$6,224 in economic benefit.

Maximum and Minimum Liability Amounts = \$6,846 - \$1,807,000

CWC 13385(e) requires that, "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 Enforcement Policy (Step 8) further explains that "The adjusted Total Base Liability Amount shall be at least ten percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business..." The Total Base Liability Amount of \$120,926.78 exceeds the minimum liability amount of \$6,846 by more than ten percent.

The statutory maximum liability amount, pursuant to Water Code Section 13385(c) (1) and (2), is \$1,807,000. The Total Base Liability Amount of \$120,926.78 is less than the statutory maximum liability amount.

Other Factors as Justice May Require = \$13,000 (staff costs)

Staff costs for investigation amount to \$20,700 at an estimated \$150/hour. For settlement purposes, the parties agreed to recover \$13,000 in staff costs.

3.0 FINAL LIABILITY AMOUNT = \$133,927

Total Base Liability + Staff Costs = Final Liability Amount

\$120,926.78 + \$13,000 = \$133,926.78

\$133,926.78 rounded to the nearest whole dollar = \$133,927

4.0 DOCUMENTS TO BE INCLUDED IN THE RECORD

| Title | Source |
|---|----------------|
| 1. California Water Code | hyperlink |
| 2. Clean Water Act | hyperlink |
| 3. Water Quality Control Plan for the San Diego Basin | hyperlink |
| 4. State Water Resources Control Board Order No. 2006-003-DWQ | hyperlink |
| 5. San Diego Water Board Order No. R9-2007-0005 | hyperlink |
| 6. San Diego Water Board Order No. R9-2010-0086 | hyperlink |
| 7. CalEMA Spill Notification Report 8/28/2011 | ECM DH 255383 |
| 8. CIWQS Spill Report (draft and final) | ECM DH 1347258 |
| | ECM DH 1347259 |
| 9. SDWB Inspection Report 8/29/2011 | ECM DH 1347242 |
| 10. Escondido Spill Update 8/29/2011 | ECM DH 1347245 |
| 11. City of Escondido Voluntary Report 11/11 | ECM DH 261955 |
| 12. Escondido Creek Conservancy Letter re: Spill 1/26/12 | ECM DH 270415 |
| 13. Notice of Violation No. R9-2013-0081 and RTR 4/29/2013 | ECM DH 1061132 |
| 14. (certified mail return receipt) | ECM DH 1062269 |
| 15. Prosecution Team Follow-up Inspection Report 6/5/2013 | ECM DH 1347900 |
| 16. City Response to Investigative Order 6/7/2013 | ECM DH 1347329 |
| | ECM DH 1347248 |
| | ECM DH 1347320 |
| 17. 2011-2012 HAARF Historic Flow Data | ECM DH 1347333 |
| 18. Escondido 8/28/2011 SSO Volume Calculation | ECM DH 1347320 |
| 19. Summary of Staff Costs | ECM DH 1347893 |
| 20. Spill Location Map | ECM DH 1347325 |
| 21. EPA BEN model calculations | ECM DH 1347891 |