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GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

January 17, 2018

Mr. Richard E. Crompton, Director
Department of Public Works
County of San Diego
5510 Overland Avenue, Suite 410
San Diego, CA 92123-1237

Certified Mail - Return Receipt Requested
Article Number: 7015 0640 0006 1569 9661

In reply refer to / attn:
631623:cmeans

SUBJECT: Notice of Violation No. R9-2018-0009 and Investigative Order No. R9-2018-0010 for Violations of Order No. 2006-003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region*, California Water Code Sections 13260 and 13376, *Water Quality Control Plan for the San Diego Basin (Basin Plan)* Waste Discharge Prohibitions Nos. 1 and 14, and Clean Water Act Section 301.

Mr. Crompton:

The County of San Diego is hereby requested to provide additional information regarding alleged violations of Order No. 2006-003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (Statewide General Order)*¹, Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region (Regional General Order)*², California Water Code sections 13260 and 13376, *Water Quality Control Plan for the San Diego Basin (Basin Plan)* Waste Discharge Prohibitions Nos. 1 and 14, and Clean Water Act section 301.

The alleged violations stem from a reported discharge of 900,000 gallons of raw sewage to Los Cocheros Creek beginning sometime on February 28, 2017 and ending on March 17, 2017 (18 days) when the spill was discovered by a County maintenance crew performing routine maintenance inspections. Additional violations are alleged in response to the sewage repair activities involved in protecting and armoring the sewage main line within the Creek.

The alleged violations may potentially subject the County to additional enforcement by the San Diego Regional Water Quality Control Board (San Diego Water Board), including a civil liability assessment of up to \$10,000 per day of violation and \$10 per gallon for each gallon not cleaned up in accordance with California Water Code Section 13385. The San Diego Water Board reserves the right to take any appropriate enforcement after its investigation.

¹ The Statewide General Order can be accessed on the State Water Resources Control Board website at https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2006/wqo/wqo2006_0003.pdf

² The Regional General Order can be accessed on the San Diego Regional Water Quality Control Board website at https://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2007/2007_0005.pdf

California Water Code Section 13304(c) provides that the San Diego Water Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the San Diego Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action required by this order.

In the subject line of any response, please include the requested "in reply refer to" information located at the top of this letter. For questions pertaining to the subject matter, please contact Cristopher Means at (619) 521-3365 or via email at christopher.means@waterboards.ca.gov

NOTICE OF VIOLATION NO. R9-2018-0009

The County of San Diego is required to operate and maintain its sewage collection system in compliance with requirements contained in the Statewide General Order and Regional General Order.

Background

On March 17, 2017 the County of San Diego reported a 900,000 gallon raw sewage spill to Los Coches Creek, a water of the US and State (Spill Event ID 833770). The spill location was identified as being in the vicinity of 9118 E Sierra Alta Way, El Cajon, CA. The spill occurred during a 25-year storm event, which resulted in extensive erosion to the creek's embankment. Channel erosion exposed and damaged a 40 foot segment of a 12 inch gravity sewer main which ran parallel to Los Coches Creek. The County reported that the sewage discharge to the creek began sometime on February 28, 2017 and ended on March 17, 2017 (for at least 18 days) when the spill was discovered by a County maintenance crew performing routine maintenance inspections. The start date was determined by talking to a property owner who noticed the damaged pipe on February 28, 2017, but did not notify the County.

On March 18, 2017 the County's emergency contractor removed and replaced the damaged segments of sewer main and secured the exposed pipe in ¾ inch rock bedding wrapped in filter fabric, using 12 inch minus rock above and around the pipe zone to anchor and protect the pipe against future erosion.

On May 1, 2017, in accordance with the Statewide General Order monitoring and reporting program, the County submitted a technical report regarding the spill to the CIWQS database. The report noted that on March 20, 2017 the County's emergency contractor returned to the site to complete installation of additional rock slope protection to further stabilize the repaired section of pipe. The report also noted that the County would coordinate with utility agencies to "*identify the utility agency responsible to reconstruct the creek channel to pre-storm disposition.*" The County requested a response, from all agencies that own and operate utilities aligned within the creek limits, by May 5, 2017.

According to the technical report, the County began researching alternative strategies for relocating the subject sewer line away from the creek channel. Conceptual planning details for alternatives were anticipated by June 30, 2017.

ALLEGED VIOLATIONS:

1. The County Discharged Untreated Sewage to Waters of the US/State

As described above, the County violated Prohibition C.1 of the Statewide General Order which states "Any SSO (sanitary sewer overflow) that results in the discharge of untreated or partially treated wastewater to waters of United States is prohibited." Los Coches Creek is a water of the United States.

2. The County Created a Condition of Nuisance

The County violated Prohibition C.2 of the Statewide General Order which 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."³

Untreated sewage contains a mixture of pollutants and high levels of pathogenic organisms, which could potentially transmit diseases to ecological receptors. Consequently, the discharge of 900,000 gallons had the potential to adversely affect public health, adversely affect animal and plant life, pollute surface and ground water and cause a public nuisance, particularly when untreated sewage is discharged to areas with high public exposure. An October 31, 2017 article in the Voice of San Diego⁴ details the potential contact the spill may have had on homeless populations and other communities downstream of the spill, and in particular, one family's experience when contaminated flow from the creek coursed through their back yard where their children play. After the sewage flow through their property ceased, the County hired a contractor to disinfect their backyard.

3. The County Discharged Untreated Sewage Upstream of a Sewage Treatment Plant

The County violated Prohibition B.1 of the Regional General Order which states "The discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant is prohibited." The discharge of untreated sewage into Los Coches Creek occurred upstream of the appropriate treatment facility.

4. The County Discharged Pollutants to Surface Waters of the United States without an NPDES Permit

The County violated section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code section 13376 which prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. There is no NPDES

³ California Water Code Section 13050(m) defines nuisance as anything which meets all the following requirements: 1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of property. 2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. 3) Occurs during, or as a result of the treatment or disposal of wastes.

⁴ The article entitled "What a Local Sewage Spill Actually Looks Like" can be found at:

<https://www.voiceofsandiego.org/topics/government/local-sewage-spill-actually-looks-like/>

permit that authorizes the discharge of untreated sewage to Los Coches Creek, the San Diego River, or the Pacific Ocean which are all waters of the United States.

5. The County Failed to provide a Report of Waste Discharge for the Discharge of Fill to Waters of the State

California Water Code Section 13260 (a)(1) States:

"Each of the following persons shall file with the appropriate regional board a report of the discharge, containing the information that may be required by the regional board:

- (1) A person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system."

Dredging, filling, or excavation within waters constitutes a discharge of waste to waters of the US/State, and prospective dischargers are required to submit a ROWD to the appropriate Regional Water Quality Control Board and obtain a certification and/or waste discharge requirements. Where a waiver of waste discharge requirements exists, the discharger is required to comply with waiver conditions, often including the filing of a Notice of Intent (NOI).

On March 18, 2017, and again on March 20, 2017 County contractors discharged fill (in the form of gravel and 12-inch minus rock) into the channel of Los Coches Creek to protect the repaired 12-inch sewer main. A review of San Diego Water Board files does not indicate that County provided a report of waste discharge, or waiver NOI, either prior to or after the fact regarding the fill placed in Los Coches Creek, a waters of the State.

6. The County Failed to Obtain a Clean Water Act (CWA) Section 401 Water Quality Certification for Impacts to Waters of the US/State

The discharge of dredge and fill material into waters of the United States without a permit under CWA section 404 and without obtaining state water quality certification pursuant to CWA section 401 constitutes a violation of CWA section 301.

California Water Code Section 13376 states in part:

"A person who discharges pollutants or proposes to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state or a person who discharges dredged or fill material or proposes to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with the procedures set forth in Section 13260. Unless required by the state board or a regional board, a report need not be filed under this section for discharges that are not subject to the permit application requirements of the Federal Water Pollution Control Act, as amended ..."

"...The discharge of pollutants or dredged or fill material or the operation of a publicly owned treatment works or other treatment works treating domestic sewage by any person, except as authorized by waste discharge requirements or dredged or fill material permits, is prohibited."

The repair activities, as described by the County in the May 2017 Technical Report, and observed during a San Diego Water Board inspection on November 2, 2017 (see Enclosure 1) would have required that County apply for and obtain a CWA section 401 Water Quality Certification. This 401 certification is necessary to obtain CWA section 404 authorization from the US Army Corps of Engineers. A review of San Diego Water Board files shows that the County never applied for 401 Certification.

7. The County Violated Waste Discharge Prohibition No.1 Contained in the *Water Quality Control Plan for the San Diego Basin (Basin Plan)*

Discharge Prohibition No. 1 states:

"The discharge of waste into the water of the State in a manner causing, or threatening to cause, a condition of pollution, contamination or nuisance as defined in CWC Section 13050 is prohibited."

The discharge of 900,000 gallons of untreated sewage to Los Coches Creek is a discharge of waste to waters of the State in violation of Discharge Prohibition No. 1. The sewage spill has, in the short term, negatively impacted the Beneficial Uses in the creek and has resulted in a condition of pollution, contamination or nuisance.

8. The County Violated Waste Discharge Prohibition No.14 Contained in the *Water Quality Control Plan for the San Diego Basin (Basin Plan)*

Discharge Prohibition No. 14 states:

"The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom depositions, turbidity or discoloration in waters of the State or which unreasonably affect, or threaten to affect, beneficial uses of such water is prohibited."

Emergency pipeline repair activities resulted in the discharge of earthen materials within waters of the State, in violation of Discharge Prohibition No. 14. The discharged earthen material (12-inch minus rock and gravel) remains in waters of the State. Beneficial Uses assigned to Los Coches Creek include Industrial Service Supply (IND), Contact Water Recreation (REC1), Non-contact Water Recreation (REC2), Warm Freshwater Habitat (WARM), and Wildlife Habitat (WILD). The discharged fill still remains in the creek and, as of the November 2017 San Diego Water Board inspection, no known mitigation of the damage to the creek has been initiated to address the negative impacts resulting from the repair work.

INVESTIGATIVE ORDER NO. R9-2018-0010

AN ORDER DIRECTING THE COUNTY OF SAN DIEGO TO SUBMIT A TECHNICAL REPORT PERTAINING TO THE INVESTIGATION OF UNAUTHORIZED DISCHARGES OF SEWAGE AND EARTHEN MATERIALS TO LOS COCHES CREEK, SAN DIEGO COUNTY

The California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board) finds that:

1. **Legal and Regulatory Authority:** This Order is based in part on (1) sections 13260 and 13267 of the California Water Code (Water Code); (2) applicable state and federal regulations; (3) the *Water Quality Control Plan for the San Diego Basin* (Basin Plan) adopted by the San Diego Water Board; (4) State Water Resources Control Board (State Water Board) policies and regulations, including State Water Board Resolution No. 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*); and (5) relevant standards, criteria, and advisories adopted by other state and federal agencies.
2. **Waste Discharge Requirements:** The County of San Diego (hereinafter the County) sewage collection system is regulated by State Water Board Order No. 2006-0003-DWQ, *Statewide Waste Discharge Requirements for Sanitary Sewer Systems (Statewide General Order)*, and San Diego Water Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region (Regional General Order)*.
3. **Persons Responsible for the Discharge of Wastes:** The County owns and operates the 12-inch gravity main sewer line which previously ran parallel to Los Coches Creek, in the vicinity of 9118 E Sierra Alta Way in unincorporated El Cajon.
4. **Discharge of Untreated Sewage and Fill:** The County reported the following information about an illicit discharge of untreated sewage that occurred between February 28, 2017 and March 17, 2017:
 - a. On March 17, 2017 the County detected a break in the 12-inch gravity sewer main during a routine maintenance inspection of the line. The pipe became damaged during a 25-year rain event that severely eroded the banks of Los Coches Creek and exposed approximately 40 feet of sewage line.
 - b. The approximate start date for the spill was determined from discussions with a nearby property owner who witnessed the damaged pipe, but failed to notify the County.
 - c. Upon discovery of the spill the County stopped the discharge on March 17, 2017.
 - d. On March 18, 2017 the County's emergency contractor removed and replaced the damaged segments of sewer main and secured the exposed pipe in $\frac{3}{4}$ -inch rock bedding wrapped in filter fabric, using 12-inch minus rock above and around the pipe zone to anchor and protect the pipe against future erosion. On March 20, 2017 the County's emergency contractor

returned to the site to complete installation of additional rock slope protection to further stabilize repaired section of pipe.

- e. On May 1, 2017, in accordance with the Statewide General Order monitoring and reporting program, the County submitted a technical report regarding the spill to the CIWQS database.
- f. A review of San Diego Water Board records indicates the County failed to obtain a Clean Water Act section 401 water quality certification and/or Waste Discharge Requirements for impacts to the creek associated with the pipeline repair work.

5. **Potential Impacts of the Sewage Discharge:** Untreated sewage contains a mixture of pollutants and high levels of pathogenic organisms, which could potentially transmit diseases to ecological receptors. Consequently, a discharge of untreated sewage has the potential to adversely affect public health, adversely affect animal and plant life, pollute surface water or groundwater, and cause a public nuisance, particularly when untreated sewage is discharged to areas with high public exposure.
6. **Basis for Requiring Reports:** Water Code section 13267 provides that the San Diego Water Board may require dischargers, past dischargers, or suspected dischargers to furnish technical or monitoring reports as the San Diego Water Board may specify, provided that the burden, including costs, of these reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In requiring those reports, the San Diego Water Board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.
7. **Need for and Benefit of a Technical Report:** A technical report is needed to enable the San Diego Water Board to effectively evaluate the nature, circumstances, extent, and impacts of the illicit discharge of sewage and fill. In requiring these reports, the San Diego Water Board also hopes to determine whether the County's corrective actions are sufficient to offset or eliminate harm that has occurred, and minimize future risk to human health or the environment. The burden of providing the required report bears a reasonable relationship to the need for the report and the benefits to be obtained from the report.
8. **California Environmental Quality Act (CEQA) Compliance:** This Order is exempt from the following provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.): enforcement actions taken for the protection of the environment are exempted in accordance with section 15308, Chapter 3, Title 14 of the California Code of Regulations (CCR); enforcement actions taken by a regulatory agency are exempted by the provisions of CEQA pursuant to section 15321(a) (2), Chapter 3, Title 14 of the CCR. This action is also exempt from the provisions of CEQA in accordance with section 15061(b) (3) of Chapter 3, Title 14 of the CCR because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
9. **Qualified Professionals:** Qualified professionals are necessary for preparing the technical report required by this Order, in order to ensure that information presented in the report is reliable and accurate. Professionals should be qualified, licensed where applicable, and competent and proficient in fields pertinent to the required activities.

10. **Cost Recovery:** Pursuant to Water Code section 13304, and consistent with other statutory and regulatory requirements, including not but limited to Water Code section 13365, the San Diego Water Board is entitled to, and will seek reimbursement for, all reasonable costs actually incurred by the San Diego Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.

IT IS HEREBY ORDERED, that pursuant to section 13267 of the California Water Code, the County of San Diego is required to submit a technical report by **5:00 pm on March 5, 2018** presenting the required content requested below related to the unauthorized discharge of 900,000 gallons of untreated sewage that occurred from the 12-inch gravity main adjacent to Los Coches Creek. The technical report must comply with the directives of this Order and include the following information:

A. CONTENTS OF THE TECHNICAL REPORT

General Collection System Information

1. A complete, detailed map showing the 12-inch sewer main that spilled in to Los Coches Creek, a delineation of the creek in the vicinity of the spill, and the areas serviced by the pipe.
2. A description of the total number of residences serviced by the 12-inch gravity main and the service population.
3. In questions 28 and 29 of the SSO Questionnaire for the County of San Diego collection system in the Statewide CIWQS database, it states that there are no gravity line or force main crossings of water bodies within the County's collection system. Please verify that this information is correct. If it is not correct, please provide locations of pipeline crossings of water bodies, and update the CIWQS SSO Questionnaire.

SSO Volume Estimation

4. A detailed description of the factors involved in determining the start date of the discharge of sewage, including local rain fall totals for the days preceding the suggested pipe break event (February 26-27, 2017). If downstream flow data is available to help the San Diego Water Board evaluate the potential start date, include this in your response.
5. Provide a detailed rationale for the values used in Manning's equation and other factors used to determine the estimated volume of sewage discharge, including:
 - a) Peak flow depth measurement of 1.8 inches
 - b) Peaking factor of 2.5
 - c) Pipeline diameter of 10-inches instead of 12
 - d) Peak flow time of 12:30

Emergency Repair Activities and Creek Restoration Plans

6. Provide a detailed description of all emergency repair activities conducted within and adjacent to Los Coches Creek to repair the damaged 12-inch gravity sewer line. Include any photo-documentation of the repair activities as they proceeded to completion and work orders for contractors conducting pipeline protection activities.
7. Provide all correspondence, authorizations, notifications and emails between the County and resource agencies (San Diego Water Board, US Army Corps of Engineers, CA Dept. of Fish & Wildlife) pertaining to the emergency repairs in Los Coches Creek.
8. If no authorizations to conduct emergency repairs within Los Coches Creek were obtained from any resource agencies, provide the County's rationale for not seeking to obtain authorization for the discharge of fill to Los Coches Creek.
9. Provide an estimation of the temporary and permanent impacts to aquatic resource types (riparian zone, stream channel, wetlands) as part of the emergency repair activities. For each aquatic resource type, indicate the impacts in acres, cubic yards and linear feet of the estimated discharge to Los Coches Creek.
10. The May 1, 2017 technical report submitted to CIWQS stated that the County would coordinate with utility agencies to "*identify the utility agency responsible to reconstruct the creek channel to pre-storm disposition.*" The County requested a response, from all agencies that own and operate utilities aligned within the creek limits, by May 5, 2017. Provide copies of all documentation related to this task, including any planning documents prepared to address the restoration of the creek and mitigate the impacts of the emergency repair activities within Los Coches Creek.
11. The May 1, 2017 technical report submitted to CIWQS stated that the County is researching alternative strategies for relocating the subject sewer line away from the creek channel. Conceptual planning details for alternatives were anticipated by June 30, 2017. Provide any documentation regarding the County's evaluation of the feasibility of relocating the subject sewer line away from the creek channel.

Impacts of the Discharge

12. An assessment of the potential short and long-term impacts of the discharge of sewage on public health, animal and plant communities (including sensitive and/or endangered species), and on the overall ecosystem downstream of the discharge. The assessment must include a summary of all threatened and endangered species located downstream of the spill site within Los Coches Creek and the San Diego River and a discussion of the most likely fate and transport of common pollutants in sewage (e.g. pathogens and nutrients). This assessment must be prepared by a technical professional qualified to evaluate the short and long-term impacts of the discharges on ecological receptors and public health.

Additional Information

13. Any other pertinent information that will assist the San Diego Water Board in evaluating the nature, circumstances, extent, and impacts of the discharges and corrective actions scheduled or implemented.

B. REPORTING REQUIREMENTS

14. **Penalty of Perjury Statement:** All reports must be signed by the Discharger's corporate officer or its duly authorized representative, and must include the following statement by the official, under penalty of perjury, that the report is true and correct to the best of the official's knowledge:

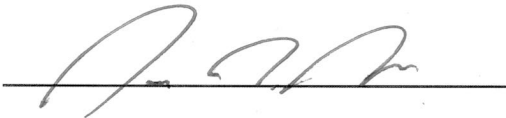
"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

15. **Report Submittal:** Please submit all reports and information required under this Certification in electronic format via e-mail to **SanDiego@waterboards.ca.gov**. Documents over 50 megabytes will not be accepted via e-mail and must be placed on a disc and delivered to the San Diego Water Board, 2375 Northside Drive, San Diego, CA 92108. Each electronic document must be submitted as a single file, in Portable Document Format (PDF), and converted to text searchable format using Optical Character Recognition (OCR). All electronic documents must include scanned copies of all signature pages; electronic signatures will not be accepted. Electronic documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: **631623:cmeans**

C. NOTIFICATIONS

16. **Enforcement Discretion:** The San Diego Water Board reserves its right to take any enforcement action authorized by law for violations of the terms and conditions of this Order.
17. **Enforcement Notification:** Water Code section 13268 (a) (1) provides that any person failing or refusing to furnish technical or monitoring report information as required by Water Code section 13267(b), or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly for an administered imposed liability of up to \$1,000 per day for each day compliance is not achieved with an Order issued in accordance with subdivision 13268(b).

18. **Requesting Administrative Review by the State Water Board:** Any person affected by this action of the San Diego Water Board may petition the State Water Board to review the action in accordance with section 13320 of the Water Code and CCR Title 23 section 2050. The petition must be received by the SWRCB (Office of Chief Counsel, P.O. Box 100, Sacramento, California 95812) within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.



JAMES G. SMITH
Assistant Executive Officer
San Diego Water Board

17 Jan 2018

Date

Enclosure: November 2, 2017 San Diego Water Board Inspection Report

Cc with enclosure via email:

Chiara Clemente, San Diego Water Board: Chiara.Clemente@waterboards.ca.gov
Jeremy Haas, San Diego Water Board: Jeremy.haas@waterboards.ca.gov
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Tech Staff Info & Use	
Place ID	631623
Reg. Measure ID NOV	418354
Reg. Measure ID IO	418355
Inspection ID	30987010
Violation ID	1022368

