



Linda S. Adams  
Secretary for  
Environmental Protection

**California Regional Water Quality Control Board  
Santa Ana Region**

3737 Main Street, Suite 500, Riverside, CA 92503  
Phone (951) 782-4130 • FAX (951) 781-6288  
www.waterboards.ca.gov/santaana

October 19, 2009

Gregory C. Devereaux, City Manager  
City of Ontario  
303 East 'B' Street  
Ontario, CA 91764

**TRANSMITTAL OF ADMINISTRATIVE CIVIL LIABILITY (ACL) COMPLAINT TO THE CITY OF ONTARIO, ACL COMPLAINT NO. R8-2009-0060**

Dear Mr. Devereaux:

Enclosed is a certified copy of Administrative Civil Liability Complaint No. R8-2009-0060 (hereinafter the "Complaint"). The Complaint alleges that the City of Ontario violated State Water Resources Control Board Order No. 2006-0003-DWG by discharging untreated wastewater (sewage) to waters of the United States, for which a penalty may be imposed under Section 13350 of the California Water Code. The Complaint proposes that administrative civil liability in the amount of forty-one thousand seven hundred and thirty-seven dollars (\$41,737) be imposed as authorized under Water Code Section 13350(e)(2). Also enclosed are a Waiver Form and a Hearing Procedure that sets forth important requirements and deadlines for participation in the hearing. Additionally, a Fact Sheet describing the Complaint process is available at:

[http://www.waterboards.ca.gov/santaana/public\\_notices/enforcement\\_actions.shtml](http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml)

The Fact Sheet describes the Complaint process and explains what the City of Ontario can expect and its obligations as the process proceeds. If preferred, a hard copy of the Fact Sheet may be obtained by contacting Stephen D. Mayville at (951) 782-4992.

**Please read each document carefully. This Complaint may result in the issuance of an order by the Regional Board requiring that you pay a penalty.**

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)  
For delivery information visit our website at www.usps.com

**OFFICIAL USE**

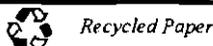
Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

7008 1140 0000 04TT 8001 442 E0T4 2000 04TT 8001

**RETURN**

Sent To  
Gregory C. Devereaux City Manager  
Street, Apt. No. or PO Box No. 303 E. "B" St. City of Ontario  
City, State, ZIP+4<sup>®</sup> Ontario CA 91764

PS Form 3800, August 2006 See Reverse for Instructions



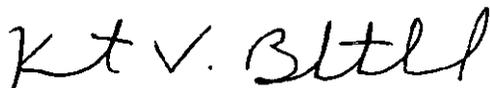
If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on December 10, 2009. The staff report regarding this Complaint and the meeting agenda will be mailed to you not less than 10 days prior to the hearing.

Pursuant to California Water Code Section 13323, the City of Ontario has the option to waive its right to a hearing. Should the City of Ontario waive its right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If the City of Ontario chooses to waive its right to a hearing, please sign and submit the enclosed Waiver Form with a check for forty-one thousand seven hundred and thirty-seven dollars (\$41,737) made payable to the State Water Resources Control Board-WDPF. The Waiver Form and check should be sent to the Regional Board office in the enclosed pre-printed envelope.

If the City of Ontario does not wish to waive its right to a hearing, requesting a pre-hearing meeting, as set forth in the Hearing Procedure is recommended. Should you wish to schedule a pre-hearing meeting, please submit your request prior to October 26, 2009.

If you have any questions about the Complaint or the enclosed documents, please contact Stephen D. Mayville, Chief of Enforcement, at (951) 782-4992 ([smayville@waterboards.ca.gov](mailto:smayville@waterboards.ca.gov)). All legal questions should be directed to Reed Sato at (916) 341-5889 ([rsato@waterboards.ca.gov](mailto:rsato@waterboards.ca.gov)), Director, Office of Enforcement.

Sincerely,



Kurt V. Berchtold  
Assistant Executive Officer  
Regional Board Prosecution Team

Enclosures: Complaint No. R8-2009-0060, Waiver Form and Preprinted Envelope

cc with a copy of the complaint (by electronic mail only):

Board Members  
Executive Officer (Regional Board Advisory Team)  
State Water Resources Control Board, Office of Chief Counsel – David Rice  
(Regional Board Advisory Team Attorney)  
State Water Resources Control Board, Division of Water Quality – Bruce Fujimoto  
State Water Resources Control Board, Office of Enforcement – Reed Sato  
(Regional Board Prosecution Team Attorney)  
U.S. Environmental Protection Agency, Region 9 (WTR-7) – Ken Greenberg





Linda S. Adams  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board

## Santa Ana Region

3737 Main Street, Suite 500, Riverside, California 92501-3348  
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221  
www.waterboards.ca.gov/santaana



Arnold Schwarzenegger  
Governor

### WAIVER FORM FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

By signing this waiver, I affirm and acknowledge the following:

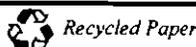
I am duly authorized to represent the City of Ontario (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R8-2009-0060 (hereinafter "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

(**OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability in full.**)

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **forty-one thousand seven hundred thirty-seven dollars (\$41,737)** by check that references "ACL Complaint No. R8-2009-0060." made payable to the "State Water Resources Control Board-WDPF". Payment must be received by the Regional Board by **November 3, 2009** or the Regional Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Board receive significant new information or comments from any source (excluding the Regional Board's Prosecution Team) during this comment period, the Regional Board's Assistant Executive Officer may withdraw the Complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer for the Regional Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(**OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.**) I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the Complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Regional Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional

California Environmental Protection Agency



**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

- 2 -

Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

**(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the Complaint. By checking this box, the Discharger requests that the Regional Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Board to approve the extension.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

State of California  
California Regional Water Board Quality Control Board  
Santa Ana Region

IN THE MATTER OF:

The City of Ontario	)	Complaint No. R8-2009-0060
303 East 'B' Street	)	
Ontario, CA 91764	)	for
	)	Administrative Civil Liability
Attn: Mr. Gregory C. Devereaux	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The City of Ontario (hereinafter Ontario) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), may impose administrative civil liability, pursuant to California Water Code (hereinafter "CWC") Section 13350.
2. A hearing concerning this Complaint will be held before the Regional Board within 90 days of the date of issuance of this Complaint, unless, pursuant to CWC Section 13323, Ontario waives its right to a hearing. The waiver procedures are specified in the attached Waiver Form. The hearing in this matter is scheduled for the Regional Board's regular meeting on December 10, 2009, at the City Council Chambers, City of Corona, 400 S. Vicentia Avenue, City of Corona, California. Ontario, or its representative, will have the opportunity to appear and be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
3. If a hearing is held on this matter, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

**THE COMPLAINT IS BASED ON THE FOLLOWING FACTORS:**

4. Ontario owns and operates 378 miles of sanitary sewer system which are regulated under the State Water Resources Control Board's General Waste Discharge Requirements for Sanitary Sewer Systems, Water Quality Order No. 2006-0003 (hereinafter "SSO Order").

5. Ontario's sanitary sewer system normally contains both domestic sanitary wastewater and industrial wastewater. Untreated domestic and industrial wastewater contains high levels of bacteria, nutrients, metals and other pollutants. If discharged, these pollutants have the potential to impact the beneficial uses of the receiving waters. Ontario is alleged to have violated California Water Code (CWC) §13350 by discharging untreated wastewater to waters of the United States in violation of the prohibition against such discharges contained in the SSO Order.
6. Provision C. 1 of the SSO Order states, "Any SSO<sup>1</sup> that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited." On May 30, 2009, an overflow of untreated wastewater occurred from Ontario's sanitary sewer system that resulted in a discharge of an estimated 25,500 gallons of sewage to Reach 1 of Cucamonga Creek, a water of the United States. Ontario failed to adequately contain the overflowing wastewater to prevent it from discharging into the Creek, and the discharged wastewater was not recovered. Ontario also failed to recover trash and other debris washed into Cucamonga Creek as a result of the wastewater discharge.
7. The Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) designates beneficial uses of waterbodies within the Region. Cucamonga Creek, Reach 1 has designated beneficial uses that include water contact recreation (restricted), non-contact water recreation, limited warm fresh water habitat and wildlife habitat. The Creek is an improved, concrete lined flood control channel and box culvert system extending downstream to the confluence with Mill Creek. The discharge of untreated wastewater from Ontario's sanitary sewer system impacted the designated beneficial uses of the Creek.
8. Provision D.1 of the SSO Order states, "The Enrollee must comply with all conditions of this Order. Any noncompliance with this Order constitutes a violation of the California Water Code and is grounds for enforcement action." Ontario violated Provision C.1 of the SSO Order.
9. Pursuant to CWC §13350(e), the Regional Board may impose civil liability administratively either on a daily basis [per CWC §13350(e)(1)] or on a per gallon basis [per CWC §13350(e)(2)], but not both. The Assistant Executive Officer proposes to impose civil liability per CWC §13350(e)(2).
10. CWC §13350(e)(2) states that civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged. The maximum liability for the violation cited above is \$255,000 (25,500 gallons X \$10 per gallon = \$255,000).

---

<sup>1</sup> SSO=Sanitary sewer overflow

11.CWC §13327 specifies factors that the Regional Board shall consider in establishing the amount of civil liability. Consideration of these factors is addressed in the following table.

Factor	Comment
A. Nature, Circumstance, Extent, and Gravity of Violation	Ontario discharged an estimated 25,500 gallons of untreated wastewater from their sanitary sewer system to the Cucamonga Creek. The spill was not properly contained and once the wastewater reached the Creek, it was not recovered. The spilled wastewater carried trash and debris from the storm drain system into the Creek. Ontario did not recover the contaminated trash and debris.
B. Culpability	Investigations conducted by Regional Board staff of this spill incident indicated that Ontario responded swiftly to the reported spill, including requesting help from "mutual aid" agencies, but failed to conduct a thorough investigation of the impact of the spill on the receiving waters and to remedy the impacts of the spill. Ontario staff conducted a cursory inspection of the Creek for impacts from the spill. They failed to expend any effort to enter the Creek to recover contaminated debris clearly observable from the East Guasti Road bridge. Ontario is fully aware of its obligations to comply with the SSO Order, and, therefore, is completely culpable for the discharge.
C. Economic Benefit or Savings	It is difficult to assess any economic benefit Ontario may have gained by its failure to contain and recover the sewage and debris discharged to Cucamonga Creek. It exercised forethought and reasonable judgment in mobilizing manpower (calling for mutual aid assistance from surrounding sanitation agencies) and equipment (a pump to bypass sewage until the blockage was removed) and to clear the difficult condition which created the blockage in the sewer system. However, that same level of forethought and judgment was not applied to its attempt to contain and recover the spilled wastewater and the contaminated debris discharged to waters of the United States.

D. Prior History of violations	Information available from CIWQS (California Integrated Water Quality System) indicates that Ontario has had a number of sanitary sewer overflows (SSOs) that reached surface water. All of these discharges to waters of the United States would be considered violations of the Order. However, the Regional Board has not issued a civil liability complaint to Ontario for prior violations.
E. Other Factors	It is estimated that Regional Board staff spent 87 hours to investigate and to prepare this enforcement action at a cost of \$13,050 (87 hoursX\$150/hour=\$13,050).
F. Ability to pay	Regional Board staff has no information to indicate that Ontario would be unable to pay the proposed assessment.

8. After consideration of the above factors, the Assistant Executive Officer proposes that civil liability be imposed on Ontario in the amount of \$41,737 for the violations cited above.

This penalty assessment is based on a consideration of the potential for harm from the discharge. Based on a consideration of these factors, the Assistant Executive Officer determined that an assessment of \$1.50 per gallon is appropriate. The total assessment based on flow is \$38,250. This amount is then adjusted based on Ontario's culpability, cleanup effort and cooperation, and history of violations. As indicated in the table above, Ontario responded swiftly to the discharge, but failed to address the aftereffects of the discharge. Based on this finding, a 0.75 factor is used to adjust the amount calculated above based on flow:  $\$38,250 \times 0.75 = \$28,687$ .

CWC §13327 also requires consideration of economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. These costs are added to the final liability to determine the assessed civil liability for the alleged violation(s). Since Ontario had mobilized resources to address the spill, its savings from not addressing the aftereffects of the spill are not significant. Staff did not determine any measurable economic benefit or savings from the violations addressed in this Complaint. The costs of investigation and enforcement are considered as one of the factors in the other factors as justice may require. The staff costs (\$13,050) are added to the amount in the above paragraph, for a total assessment of \$41,737 ( $\$28,687 + \$13,050 = \$41,737$ ).

## WAIVER OF HEARING

Ontario may waive its right to a hearing. If you choose to do so, please sign the attached Waiver Form and return it, together with a check for \$41,737 payable to the State Water Resources Control Board-WDPF, in the enclosed preprinted envelope. If you waive your right to a hearing and pay the assessed amount, the Regional Board may not hold a hearing regarding this complaint.

If you have any questions, please contact Stephen D. Mayville at (951) 782-4992.

10/19/09

Date

Kurt V. Berchtold

Kurt V. Berchtold  
Assistant Executive Officer  
Regional Board Prosecution Team

