



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board



Arnold Schwarzenegger
Governor

Office of Enforcement

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Item No. 11
Doc. No. 5

October 19, 2009

Via email and hand delivery

Catherine Hagan
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Thomas Zeleny
Deputy City Attorney
Office of the City Attorney
City of San Diego
1200 3rd Avenue #1100
San Diego, CA 92101

Dear Ms. Hagan & Mr. Zeleny:

Evidence and Policy Statements, ACL Complaint No. R9-2009-0042

In accordance with the Hearing Procedures for Administrative Civil Liability (ACL) Complaint No. R9-2009-0042, issued to the City of San Diego Sewage Collection System, the Prosecution Team submits the following information:

Evidence

1. All materials previously distributed to the Designated Parties, including, but not limited to, ACL Complaint No. R9-2009-0042, its technical analysis, and all attachments thereto.
2. Evidence and exhibits associated with ACL Complaint No. 98-64, issued to the City of San Diego on May 22, 1998 and considered by the California Regional Water Quality Control Board, San Diego Region (Regional Board), on June 10, 1998, regarding a discharge of 1,560,000 gallons of untreated sewage into Lake Hodges on or about April 30, 1998. This information is within the public files of the Regional Board. Materials are located within file no. 01-0004 (City of San Diego Sewage Collection System) and files no. 81-0441.00A 81-0442.00A (Regional Board meeting agenda and minutes).
3. Economic Benefit Analysis of Non-Compliance and Ability to Pay: City of San Diego, dated July 13, 2009, prepared by Gerald Horner, Economist.

Legal and Technical Arguments or Analysis

This information has been provided to designated parties with ACL Complaint No. R9-2009-0042 and related documents. Further evidence associated with ACL Complaint No. 98-64 may be used to demonstrate the compliance history and adverse affects regarding discharges from the sanitary sewer collection system into Lake Hodges.

Witnesses

The following may be used as prosecution team witnesses:

Name	Subject	Estimated Time for Testimony	Qualifications
Leo Sarmiento	Technical and administrative analysis	Five minutes	Water Quality Resources Control Engineer, State Water Resources Control Board
Joann Confrancesco	Technical and administrative analysis	Five minutes	Water Quality Resources Control Engineer, State Water Resources Control Board
Frank Melbourn, P.E.	Technical and administrative analysis	Five minutes	Professional Engineer, Water Quality Resources Control Engineer, San Diego Regional Water Quality Control Board
Jeremy Haas	Technical and administrative analysis	Five minutes	Senior Environmental Scientist, San Diego Regional Water Quality Control Board
Gerald Horner, Ph.D.	Economic Benefit and Ability to Pay Analyses	Five minutes	Ph.D. Senior Economist, Office of Research, Planning & Performance. State Water Resources Control Board

In the subject line of any response, please include the requested **"In reply refer to:"** information located in the heading of this letter. For questions pertaining to the subject matter, please contact Jeremy Haas at (858) 467-2735 or jhaas@waterboards.ca.gov.

Sincerely,

David Boyers

DAVID BOYERS
Senior Staff Counsel
State Water Resources Control Board

Enclosures: 1. Evidence and exhibits associated with ACL Complaint No. 98-64
2. Economic Benefit Analysis of Non-Compliance and Ability to Pay: City of San Diego, dated July 13, 2009

Cc: See Next Page

cc: (via email only)

Michael McCann, Assistant Executive Officer
Jeremy Haas, Senior Environmental Scientist
Joann Cofrancesco, Water Resource Control Engineer
Frank Melbourne, Water Resource Control Engineer
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Leo Sarmiento, Water Resource Control Engineer
Mark Bradley, Senior Water Resource Control Engineer
State Water Resources Control Board
Office of Enforcement
1001 I Street
Sacramento, CA 95814

Mr. Timothy Bertch, Director
Metropolitan Wastewater Department
City of San Diego
9192 Topaz Way
San Diego, CA

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State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
JUNE 10, 1998

ITEM: 11

SUBJECT: Administrative Civil Liability: Violations by the City of San Diego of Order No. 96- 04

PURPOSE: To notify the Regional Board of the issuance of Administrative Civil Liability Complaint No. 98-64, and to allow the City of San Diego an opportunity for a public hearing.

DISCUSSION: Administrative Civil Liability Complaint No. 98-64 was issued on May 22, 1998. ACL Complaint No. 98-64 alleges that the City of San Diego violated the prohibitions contained in Order NO. 96-04. On April 30, 1998, a sewage line break occurred in a 20-inch force main that conveys sanitary sewage from Rancho Bernardo to the Hale Avenue Resource Recovery Facility (HARRF) in the City of Escondido. The break was caused by the separation of a pipe joint when trestles that support the pipeline settled. The total volume spilled to Lake Hodges was 1,560,000 gallons.

As a result of the discharge, the Sante Fe Water District and San Dieguito Irrigation District had to suspend their use of Lake Hodges as a drinking water source for 4.5 days. In addition, the Lake was closed to recreational activities for two days.

ACL Complaint No. 98-64 proposes that civil liability in the amount of \$100,000 be imposed on the City of San Diego. The proposed civil liability took into consideration the nature, circumstance, extent and gravity of the violation.

The City may choose to waive their right to a hearing, settle this issue prior to the meeting or appear before

you in a public hearing to dispute the Complaint. If the City chooses to have a hearing, the Regional Board has the choice of dismissing the complaint, adopting an ACL order (ACL amount need not be the same as in the Complaint), or adopting a different enforcement action. If the City chooses to settle, staff will present the details of that settlement to you today. Unless waived, a public hearing has been scheduled to consider this matter at today's meeting.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

Attachment 1) Administrative Civil Liability Order No. 98-64

Attachment 2) Complaint No. 98-64

Attachment 3) Rationale For The Determination Of Administrative Civil Liability Contained In Complaint No. 98-64 City Of San Diego, Lake Hodges Discharge

Attachment 4) Letter from Sante Fe Irrigation District

Attachment 5) Excerpt from State Water Resource Control Board *Administrative Procedures Manual*, guidance for determining ACL amounts

Attachment 6) San Diego Union Tribune Article

Attachment 7) Location Map

RECOMMENDATION: Issuance of an administrative civil liability is recommended.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. 98-64
CITY OF SAN DIEGO
LAKE HODGES DISCHARGE
SAN DIEGO COUNTY

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

1. On May 22, 1998, the Regional Board Executive Officer issued Complaint No. 98-64 to the City of San Diego for discharging 1,560,000 gallons of untreated sewage to Lake Hodges from April 30 to May 1, 1998.
2. Complaint No. 98-64 proposed that an Administrative Civil Liability be imposed by the Regional Board on the City of San Diego for violations of Order No. 96-04.
3. Complaint No. 98-64 alleged that the City of San Diego discharged untreated sewage wastewater to Lake Hodges in violation of Prohibition A.1 of Order No. 96-04.
4. On June 10, 1998, the Regional Board conducted a hearing at which evidence was submitted concerning the discharge of untreated sewage to Lake Hodges from April 30 to May 1, 1998, as well as the amount of administrative civil liability to be imposed under the terms and conditions of Complaint No. 98-64. The City of San Diego and all other interested parties were given an opportunity to be heard and to present evidence concerning the allegations in Administrative Civil Liability Complaint No. 98-64; and the imposition of civil liability by the Regional Board. At the hearing, the Regional Board considered whether to affirm, reject, or modify the proposed administrative civil liability. The Regional Board also considered other possible enforcement actions available to the Regional Board under the Porter-Cologne Water Quality Control Act (commencing with Section 13300 of the California Water Code).
5. This enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulation.
6. The Regional Board has considered the factors specified in Water Code Section 13327 in determining the amount of civil liability.

IT IS HEREBY ORDERED, that, Administrative Civil Liability is imposed on the City of San Diego in the amount of \$100,000.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on June 10, 1998.

JOHN H. ROBERTUS
Executive Officer

SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

IN THE MATTER OF) COMPLAINT NO. 98-64
CITY OF SAN DIEGO) FOR
LAKE HODGES DISCHARGE) ADMINISTRATIVE CIVIL LIABILITY

THE CITY OF SAN DIEGO IS HEREBY GIVEN NOTICE THAT:

1. The City of San Diego is alleged to have violated provisions of laws and orders of the California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board) for which the Regional Board may impose civil liability administratively under California Water Code Section 13350.

2. Unless waived, a hearing will be held on this matter before the Regional Board at 9:00 a.m. on June 10, 1998, in the District Board Room of San Diego Wastewater Management at 600 B Street, 3rd Floor, San Diego California. City of San Diego representatives and other interested persons will have an opportunity to appear and be heard regarding the allegations in this complaint and the imposition of administrative civil liability by the Regional Board. At the hearing, the Regional Board will consider whether to affirm, reject or modify the proposed administrative civil liability.

ALLEGATIONS

3. The City of San Diego (City) discharged untreated sewage wastewater to Lake Hodges.

4. The following facts are relevant to the violation alleged in Finding No. 3 above:
 - a. The City owns and operates a sewage collection system that collects raw sewage wastewater from the Rancho Bernardo area, transports the sewage beneath Lake Hodges to the Hale Avenue Resource Recovery Facility (HARRF) owned and operated by the City of Escondido. The City is

wholly responsible for the maintenance and upkeep of the sewage collection system prior to the HARRF.

- b. On May 1, 1998, a break occurred in a force main adjacent to Lake Hodges. The break resulted in a discharge of approximately 2000 gallons per minute of untreated sewage wastewater to Lake Hodges. The City reported the total volume spilled was 1,560,000 gallons.
- c. Lake Hodges is a drinking water reservoir, used by the Sante Fe and San Dieguito Irrigation Districts. The water supply to the Districts was terminated for four and a half days. San Diego County Department of Health closed the lake to recreational activities from May 1 to May 5, 1998.

MAXIMUM CIVIL LIABILITY

5. The total maximum civil liability which could be imposed administratively by the Regional Board in this matter under W.C. Section 13250(e)(1) is \$15,600,000 based upon the maximum assessment of ten dollars (\$10) per gallon of waste discharged.
6. The Regional Board Executive Officer, having considered the factors set forth in Section 13327 of the Water Code, proposes that administrative civil liability be imposed on the City of San Diego in the amount of \$100,000.

WAIVER OF HEARING

7. The City of San Diego may waive the right to a hearing. To waive the hearing, please sign the attached waiver form and return it to the Regional Water Quality Control Board, San Diego Region, at 9771 Clairemont Mesa Blvd., Suite A, San Diego, California, 92124. Regulations of the Environmental Protection Agency require public notification any proposed settlement of the civil liability

occasioned by violation of either an NPDES permit or laws pertaining to the discharge of waste to navigable waters of the United States. Accordingly, if the City of San Diego does choose to waive the right to a hearing, interested persons will be given 30 days to comment on the amount of civil liability proposed in this complaint. Based on the comments received, the Regional Board may refuse to accept the amount of administrative civil liability proposed in this complaint, and may hold a public hearing on this complaint or may issue a new complaint proposing a different amount of civil liability. If a hearing is held, comments from interested parties at the hearing may be considered by the Regional Board in determining the amount of civil liability to assess. At the hearing, the Regional Board may impose a different amount of civil liability other than that proposed in this complaint or revoke the complaint and refer the matter to the Attorney General. If the City of San Diego representatives have any questions, please contact the Executive Officer at (619) 467-2987.


JOHN H. ROBERTUS
Executive Officer

Date: May 22, 1998

Waiver of Hearing Form
for
City of San Diego
Lake Hodges Discharge

As the designated administrative officer of the City of San Diego, I agree to waive the right of the City of San Diego to request a hearing before the Regional Board. I understand that regulations of the Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of either an NPDES permit or laws pertaining to the discharge of waste to navigable waters of the United States. Accordingly, interested persons will be given 30 days to comment on the amount of civil liability proposed in this complaint. Based on the comments received, the Regional Board may refuse to accept the amount of administrative civil liability proposed in this complaint, and may hold a public hearing on this complaint or may issue a new complaint proposing a different amount of civil liability. If a hearing is held, comments from interested parties at the hearing may be considered by the Regional Board in determining the amount of civil liability to assess. At the hearing, the Regional Board may impose a different amount of civil liability other than that proposed in this complaint or revoke the complaint and refer the matter to the Attorney General. In the event the Regional Board accepts this waiver and no hearing is held, I understand that I am giving up the right of the City of San Diego to be heard. If no comments are received during the 30-day public comment period, payment of civil liability on the amount of \$100,000 will be due within 30 days after end of the comment period.

Signature: _____

Name: _____

Position: _____

Date: _____

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

**RATIONALE FOR THE DETERMINATION OF
ADMINISTRATIVE CIVIL LIABILITY
CONTAINED IN COMPLAINT NO. 98-64
CITY OF SAN DIEGO, LAKE HODGES DISCHARGE**

May 22, 1998

DISCUSSION

On May 1, 1998, the City of San Diego (the City) reported a discharge of sanitary sewage to Lake Hodges. The discharge of 1,560,000 gallons of raw sewage was the result of a break in a 20-inch force main that conveys sewage to the Hale Avenue Resource Recovery Facility. The discharge of sanitary sewage to Lake Hodges is a violation of Order No. 96-04, *General Waste Discharge Requirements Prohibiting Sanitary Sewer Overflows by Sewage Collection Agencies*. The amount of administrative civil liability to be imposed on the City of San Diego by the Regional Water Quality Control Board, San Diego Region, for the sewage discharge should be determined after consideration of the following factors as set forth in California Water Code Section 13351:

1. MAXIMUM CIVIL LIABILITY

The total maximum administrative civil liability which could be imposed by the Regional Board in this matter is \$15,600,000. This total maximum administrative civil liability is determined in accordance with California Water Code Section 13250(e)(1). The maximum administrative civil liability which may be imposed for the discharge of sewage in violation of Waste Discharge Requirement Order No. 96-04, is ten dollars (\$10) times the number of gallons discharged; the volume of sewage discharged was 1,560,000 gallons, therefore the maximum administrative civil liability which could be imposed by the Regional Board is \$15,600,000.

2. Nature and Circumstance

The City of San Diego owns and operates a sanitary sewage collection system in the Rancho Bernardo area of San Diego County. Sanitary sewage is conveyed to a lift station and then pumped through a 20 inch high pressure force main to the Hale Avenue Resource Recovery Facility (HARRF) in the City of Escondido. The City has contracted with the City of Escondido to treated sanitary sewage at the HARRF. A portion of the force main is located under Lake Hodges, a drinking and recreational lake just south of Escondido.

On May 1, 1998, at about 7:30 a.m., staff of the City's Metropolitan Waste Water Department were notified by staff at HARRF that the pressure in the force main was low. The HARRF staff first noticed the pressure drop at 6:30 p.m. on April 30, but did not notify City staff until the next morning. City staff immediately shut off the pumps and stored incoming sewage in nearby emergency storage ponds. City staff investigated the cause of the low pressure and found a break in the force main in a remote canyon, just north of Lake Hodges. The break was caused by the separation of a pipe joint when trestles that support the pipeline settled. The trestle is located in a streambed and the settling may have been caused by saturated soil conditions because of streamflows due to recent rains. The pipeline conveys an average flow of 2000 gallons per minute. The total volume spilled was 1,560,000 gallons (2000 gallons per minute times 780 minutes).

3. Extent, and Gravity of Violation and Degree of Toxicity

The extent and gravity of the spill is significant. Lake Hodges is a drinking water reservoir. Raw sewage usually contains bacterial pathogenic organism which may be excreted by man and may cause diseases of the gastrointestinal tract, such as typhoid and paratyphoid fever, dysentery, diarrhea and cholera. Viruses in the sewage can survive for as long as six days in a normal river. The discharge of undisinfected wastewater into a surface water is a major hazard to public health.

The Sante Fe Water and San Dieguito Irrigation Districts use the lake as a drinking water source. The intake pipeline for the districts was closed before any sewage reached it. The Districts had to use an alternative source of water for four and a half days. The lake is also a popular recreational facility, with fishing, boating, kayaking and other activities. The lake was closed to recreational use for three days.

There were no apparent long term impacts to the use of the receiving water for a drinking water source and recreational lake.

4. Degree of Culpability

The City of San Diego has sole responsibility for maintenance and performance of the pipeline. The spill was unintentional and was not the result of inappropriate activities by City staff, such as accidents, etc.

5. Prior History of Violations

Regional Board records do not contain reports of recent spills due to similar circumstances on this pipeline.

6. Susceptibility to Cleanup and Voluntary Cleanup Efforts

In accordance with their Sanitary Sewer Overflow Response Plan, the City made every effort to clean up the site.

7. Economic Savings

Regional Board staff is not aware that economic savings was a factor related to this spill.

8. Ability to Pay and Continue in Business

Staff is not aware of any circumstances which would prevent the City from paying the proposed civil liability.

9. Other Matters that Justice may Require

In letter dated May 15, 1998, the San Dieguito Water District and the Sante Fe Irrigation Districts indicate that they operate the R.E. Badger Filtration Plant to treat potable water from Lake Hodges for municipal use. Because of the discharge of raw sewage from the City's collection system into Lake Hodges, the R.E. Badger Filtration Plant could not use water from Lake Hodges for 4.5 days. This cost the San Dieguito Water and Santa Fe Irrigation Districts \$50,232.00 (enclosed is a letter from San Dieguito and Santa Fe Irrigation District). This was the cost to Sante Fe and San Dieguito Water Districts to purchase potable water from an alternative source.

The City of San Diego, Water Department, Water Operations, manages the Lake as a recreational park. Fees are received for use of the lake for boating, fishing, kayaking, windsurfing and other activities. The Lake was closed to recreational users for three days, incurring a loss of revenue to Parks department of approximately \$5200.

A bass tournament was scheduled at Lake Hodges for May 2, 1998. The sewage spill forced relocation of the tournament from Lake Hodges to San Vicente Reservoir, near Lakeside. The loss to the Brian Graves Memorial Bass Tournament is approximately \$500 to \$1,000. This loss is estimated from the number of interested parties who assumed the tournament was postponed and called the sponsor the following week to participate.

There are other businesses in the area that depend, in part, on visitors to the Lake for weekend business. There may have been financial impacts to these businesses due to the Lake being closed.

To date, Regional Board staff costs in responding to this violation and preparing this civil liability is less than \$1,000. Staff is aware that other governmental agencies expended resources responding to this spill.

10. Recommended Administrative Civil Liability

Based on evaluation of the above factors and using the guidance contained in The Administrative Procedures Manual, Regional Board staff recommends that administrative civil liability be imposed on the City of San Diego in the amount of \$100,000.



Santa Fe Irrigation District

POST OFFICE BOX 409
RANCHO SANTA FE, CALIFORNIA 92067

(619) 756-2424
FAX (619) 756-0450

May 15, 1998

John Robertus, Executive Director
Regional Water Quality Control Board
9771 Clairemont Mesa Blvd. #A
San Diego, CA 92124-1324

Dear John:

This letter is in response to your inquiry regarding the adverse economic impacts upon the Santa Fe Irrigation District (SFID) and San Dieguito Water District (SDWD) following the sewage spill into Lake Hodges on or about April 30, 1998. Thank you for your attention and prompt actions following the event. It is comforting to know we all understand the local and regional significance of this precious water resource.

Following notification of the sewer spill and consultation with State Health Department, staff at the RE Badger Filtration Plant, jointly owned by SFID and SDWD, shut-down the flume that transports water from Lake Hodges. The flume was off-line for four and one half days at a flow rate of 10 million gallons/day. The calculation of the cost of the lost local supply is as follows:

Amount of water lost:

10 mgd
X 4.5 days
138 acre feet

Value of water lost:

\$424 SDCWA rate
- 65 local water acquisition & pumping cost
\$364/af differential

\$364/af differential
X138 af lost
\$50,232 value of water lost

In lieu of dwelling on the economic impacts of the most recent spill, SFID and SDWD feels that a serious effort should be undertaken to eliminate the potential for similar events in the future.

The increasing cost of imported water and planned improvements to Lake Hodges will significantly increase the economic impacts of future spills.

The San Diego County Water Authority plans to include Lake Hodges as a component of the regions emergency storage system. In the event of a failure in the imported water delivery system, Lake Hodges will be needed to meet a portion of the County's demands. An imported water delivery system shortage, combined with another failure of the high-pressure sewer forcemain in Lake Hodges, would make almost 25% of the County's emergency storage system unusable. In addition, agricultural production, cattle grazing, the Chatham Brother landfill, I-15, North County Fair and other land uses within the watershed could have similar impacts.

The loss of Lake Hodges during an emergency water shortage condition would have dramatic economic impacts. The estimated total impact to the region of water shortages ranging from two to six months have been calculated to be as much as \$5 billion countywide.

I look forward to working with your office, the City of San Diego and representatives from the San Diego County Water Authority and other organizations to develop mutually beneficial solutions to this and other problems in the Lake Hodges watershed. Once again, thank you for your prompt attention to this vital issue.

Sincerely,



Geoffrey Poole
General Manager

cc. SFID and SDWD Board of Directors
Dave Schlessinger, MWWD
Maureen Stapleton, SDCWA

IV. DETERMINING ACL AMOUNTS

The Water Code gives the Regional Water Board substantial discretion in setting ACL amounts. How this discretion is exercised is based upon several factors, some of which relate to the discharger and some of which relate to the discharge itself. The Regional Water Board is required to consider ten factors when setting ACL amounts but has latitude in how it applies and weighs each factor. This discretion is helpful, since no two cases are alike, but this often results in significant staff effort to recommend a reasonable ACL amount. In addition, maximum potential assessments are huge for some violations. Setting ACL amounts at or near the maximum often is not practical nor is it always good public policy.

One goal of this policy in calculating ACL amounts is consistency. *Similar violations should result in similar amounts*; dischargers should have some idea of their potential exposure. Another goal is deterrence; *ACL amounts should create a strong disincentive for future violations*. Finally, *dischargers should not gain an economic benefit from the violations*.

A. MINIMUM AND MAXIMUM ACL AMOUNTS

The Water Code establishes maximum ACL amounts for each type of violation. These amounts are expressed as a function of violation duration (dollars per day) or violation magnitude (dollars per gallons discharged). Maximum ACL amounts range from \$1,000 to \$10,000 per day and \$10 per gallon. (See Attachment 4).

Water Code Section 13350 also establishes minimum ACL amounts for certain violations. These amounts are either \$100 or \$500 per day of violation. The Regional Water Board is required to impose these minimum amounts unless it makes express findings based upon the factors specified in Water Code Section 13327.

B. FACTORS TO BE CONSIDERED

Section 13327 of the Water Code requires the Regional Water Board to consider ten factors when determining the amount of ACL:

"(T)he 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 ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require."

excess of effluent limits or a time schedule violation for site investigation. In these cases, the ACL amount is unaffected by the cleanup or abatement factor.

5. Economic Savings

Dischargers should not enjoy a competitive advantage because they flout environmental laws. Assessments for Water Code violations should at a minimum take away whatever economic savings a firm or agency gains as a result of those violations.

Economic savings fall into two categories: (1) deferred capital spending and (2) reduced or avoided costs of operation and maintenance (O&M). To estimate economic savings, the first step is to identify which capital improvement projects or O&M activities were delayed or avoided. The second step is to estimate these capital and O&M costs and express them as a present value.

Cost data may often be obtained from the discharger, especially when the discharger explains what it did to prevent future recurrence of the violations. If the discharger does not volunteer this cost information, staff can require it via a Water Code Section 13267 or 13383 request. Financial management programs can convert capital and O&M costs into an economic savings estimate.

Savings from deferred capital spending is calculated based on the amount of interest that could have been earned on the capital funds during the delay period. Savings from O&M activities are calculated for the entire delay period and expressed as a present value.

6. Ability to Pay and Ability to Continue in Business

Normally, assessments are not set so high as to put firms out of business or seriously harm their ability to continue in business. In a similar sense, government agencies have finite resources to pay assessments, notwithstanding their broad powers to raise revenue. At issue is how the Regional Water Boards calculate a firm's (or agency's) ability to pay.

Draft USEPA guidance provides one possible method for analyzing affordability. See 1994 "Draft Economic Guidance for Water Quality Standards Workbook" by USEPA. The draft guidance suggests analyzing four factors: liquidity (short-term ability to pay bills); solvency (long-term ability to pay bills); leverage (current debt load and ability to borrow additional funds); and earnings (how pollution-related costs affect profitability).

Assessment Matrix			
COMPLIANCE SIGNIFICANCE (DISCHARGER)	ENVIRONMENTAL SIGNIFICANCE (DISCHARGE)		
	MINOR	MODERATE	MAJOR
MINOR	\$100 - \$2,000	\$1,000 - \$20,000	\$10,000 - \$100,000
MODERATE	\$1,000 - \$20,000	\$10,000 - \$100,000	\$50,000 - \$200,000
MAJOR	\$10,000 - \$100,000	\$50,000 - \$200,000	\$100,000 to maximum amount

Examples of violations which correspond to the above categories may be found in Attachment 5.

C. RECOVERY OF STAFF COSTS

Enforcement orders issued under Water Code Section 13304 and ACL orders should address recovery of staff costs incurred in preparing the enforcement action, since most enforcement consumes significant amounts of staff time. Water Code Section 13304 explicitly allows the recovery of staff costs which are incurred in connection with a CAO. As discussed above, staff costs should also be considered as one of the "other matters as justice may require" when calculating ACL assessments.

CAOs should always include a provision that the Regional Water Board may seek recovery of staff costs, including costs for any staff investigation and oversight of cleanup, associated with the order. Below is an example of cost-recovery language:

"Pursuant to Section 13304 of the Water Code, the discharger is hereby notified that the Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the 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. The discharger shall reimburse the Board upon receipt of a billing statement for those costs."

D. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

The State Water Board supports the use of supplemental environmental projects which are funded or implemented by dischargers in exchange for a suspension of a portion of an ACL or other monetary assessment, which would otherwise be paid directly to the State Cleanup and Abatement Account. Supplemental projects should mitigate damage done to the environment by the discharger, and usually should involve the restoration or enhancement of wildlife and aquatic habitat or

MAY 1, 1998

Major sewage spill closes Lake Hodges

Weekend plans at reservoir disrupted

By Kathryn Balint
STAFF WRITER

RANCHO BERNARDO — Rhonda Graves used to worry that bad weather might hamper the bass fishing tournament she holds every May in memory of her deceased son.

But something she never dreamed of — a major sewage spill at Lake Hodges — had her scurrying to relocate today's contest to San Vicente Reservoir.

County health officials closed Lake Hodges yesterday after an estimated 2 million gallons of raw sewage spilled into the reservoir. The spill occurred when a high-pressure sewer pipe broke.

Chris Gonaver, division chief of the county Environmental Health Department, said the sewage posed no health threat to the people who use drinking water from the lake. That's because intake pipes used by the Rancho Santa Fe and the San Dieguito irrigation districts were closed before any sewage-borne pollutants could have reached them, he said.

The lake is closed to fishing, boating, kayaking, wind surfing and all other water sports at least for today and tomorrow, and perhaps longer, until water quality tests show the contamination is gone.

However, the 5th annual San Dieguito River Park Trail Run & Hike, which is routed past Lake Hodges, is still on for tomorrow.

No one is really sure how, or exactly when, the cast-iron sewage pipe broke.

The pipe is supported by 20-foot-high trestles in a remote ravine in Rancho Bernardo. About 4 million gallons a day of raw sewage from Rancho Bernardo is pumped under high pressure through the pipe to Escondido's Hale Avenue Wastewater Treatment Plant.

Treatment plant workers noticed that flows from Rancho Bernardo had ceased beginning Thursday night. They alerted San Diego city workers, who found the break in the 20-year-old pipe yesterday morning.

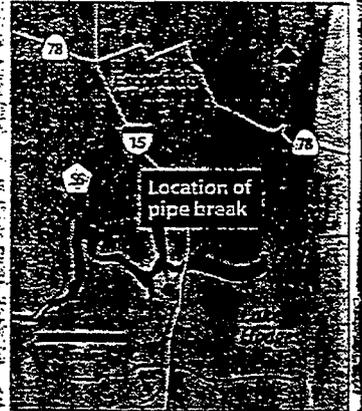
"We don't know if the trestles



CHARLENE MAN/Union-Tribune photos

Spill site: A repair crew and field supervisor yesterday inspected an old iron sewer line that broke and leaked raw sewage into Lake Hodges.

Changed:
Peter Graves posted a notice that the Brian Graves Memorial Bass Tournament today has been moved to San Vicente Reservoir.



UNION-TRIBUNE

moved and that caused the pipe to break, or if the pipe broke, causing the trestles to move," said Charles Yackiy, a deputy director for San Diego's Metropolitan Wastewater Department.

San Diego estimates 2 million gallons of sewage ended up in Lake Hodges, which holds 11 trillion gallons of water.

In 1993, about 7.2 million gallons of sewage from Ramona spilled into the lake.

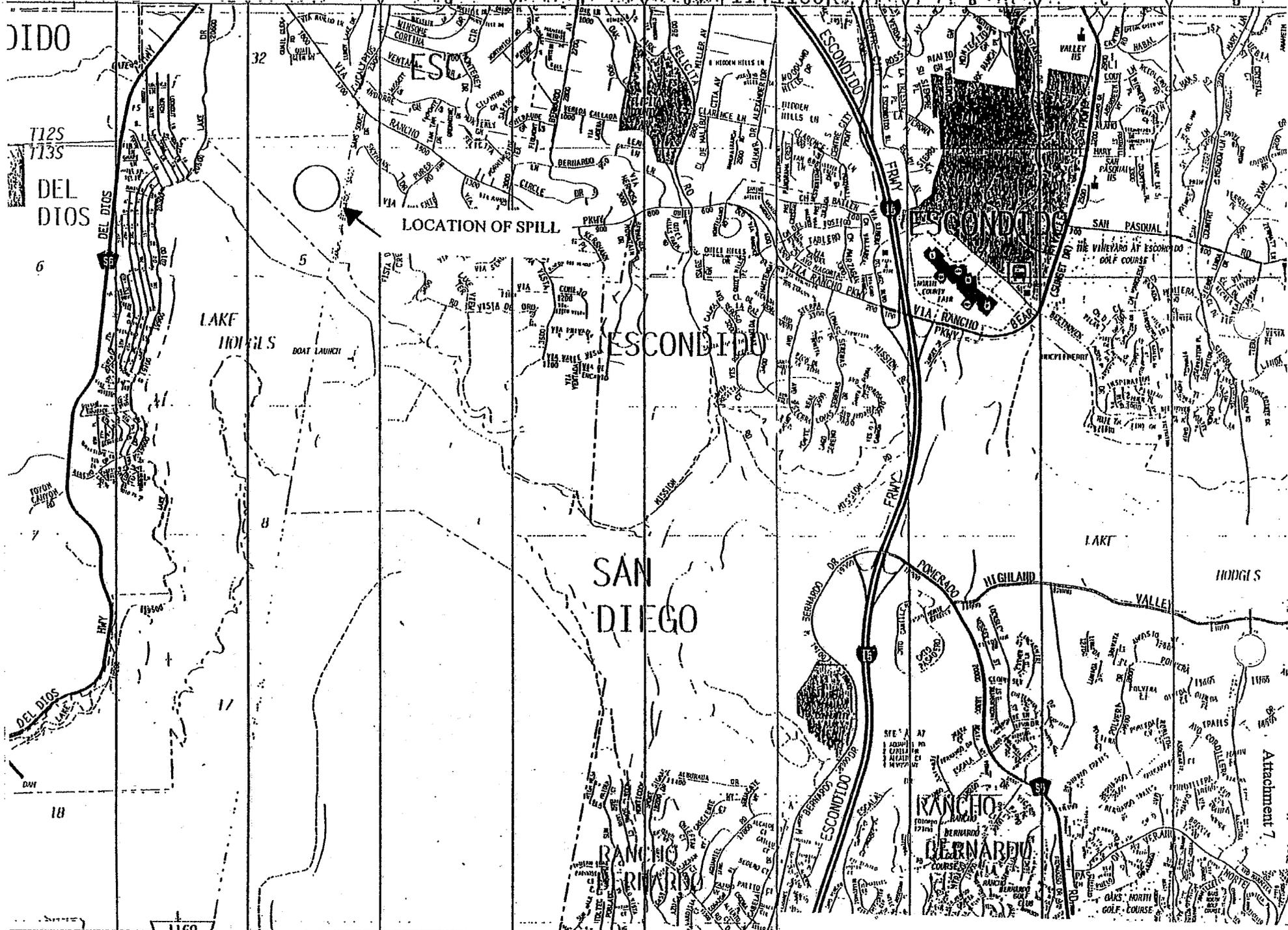
Meanwhile, the spill caused a lot

of weekend plans at the lake to go down the drain.

"We're scrambling," said Graves, who yesterday afternoon was busy calling all 50 two-person teams scheduled to compete in the Brian Graves Memorial Bass Tournament.

Her son, an avid fisherman who caught his biggest bass — a 10-pounder — at Lake Hodges, died eight years ago when his truck was struck by another vehicle. He was 16 years old, a junior at San Diegui-

to High School. Since then, Brian's parents, Rhonda and Peter Graves of Encinitas, have held a fishing tournament to raise money for a college scholarship for a student studying marine biology. Brian was an honors student who aspired to go into freshwater fisheries management, his mother said. Last year, the tournament raised \$2,500 for the scholarship.



DIDO

7125
7135

DEL DIOS

6

LAKE
HODGES

32

5

8

SAN
DIEGO

LOCATION OF SPILL

DAY

18

SEE 1169 MAP

Attachment 7

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
9771 Clairemont Mesa Boulevard, Suite A
San Diego, California 92124-1324

MINUTES OF MEETING
June 10, 1998

The regular meeting of the California Regional Water Quality Control Board, San Diego Region, was called to order by Chairman Kelley at 9:15 a.m. at the San Diego Wastewater Management, District Board Room, 600 B Street, San Diego, CA.

Item 1 - Roll Call: Board Members Present: Tim Kelley, Frank Piersall, Judy Johnson, Wayne Baglin, Charley Wolk, Jim Milch, Thomas B. Day, Kent Trimble and Fred Adjarian.

Staff Present: John Robertus, Art Coe, Lori Costa, Robert Morris, Greig Peters, John Anderson, Deborah Jayne, Bruce Posthumus, John Phillips, Sue Pease, Kristin Schwall, Karen Zachary, Rebecca Stewart, Frank Melbourn, Whitney Ghoram, and Lynn Baker.

Others Present: State Water Resources Control Board: John Richards, Jim Stubchaer; S.D. Port District: David Merk, Rick Adcock; U.S. Navy: Erick Armstrong, Wayne Thornton, Joe Ruzicsua, Adell Fullaway, Brian Gordon, Athene Harrington, F.D. Williamson; E.G. Chapman; J. Gregory; Camp Pendleton: Jayne Joy, Ralph Kinder, Lupe Armas, Karl Vogel, Mark Sarles; Padre Dam: Gary Canfield; Law/Crandall: Art Currier; Environmental Health Coalition: Nicole Capretz; SSC San Diego: Sandra Harrell, Parick Earley; Senator Dede Alpert: Stacey Birch; Chatham Site: Gordon Baesel, Chuck McLaughlin; Industrial Environmental Association: Patti Krebs; Fallbrook Public Utility Dist: Mike Page; Brobeck, Phleger, & Harrison: Chris Shand; Soil Wash Technologies: Don Johnson; CM San Diego: R. McCarthy; City of San Diego: Al Beingessner, Jamal Kanj; Coronado Friends of the Beach: Steve Ogles, Russell Elwell; San Diego Bay Keeper: Ken Moser, Carey Cooper; Woodward-Clyde: Carol Forrest; City of Coronado: Bruce Williams, Dave Blumenthal, Homer Bludau, Al Ovrom, Patty Schmidt, Steve Kirkpatrick; and County of San Diego: Chris Gonaver.

Chairman Kelley noted that Items 7 and 8 were postponed to a future meeting. Also, Item 11 was set for time certain at 1:00 and Item 15 would be heard at 2:00.

Item 2 - Public Forum

Nicole Capretz, Environmental Health Coalition, talked about the Shipyard's appeal of their NPDES permit and requested that the Board send a letter to the State Board requesting an early decision on the stay.

Item 3 - Minutes of Board Meeting of May 13, 1998

This record of the minutes of the meeting on this date is not intended for the official record of events and is solely for administrative convenience. A more detailed account of the proceedings is available upon request, consisting of a tape recording and a court reporter transcribed record. Please contact the Regional Board office for assistance.

Upon motion by Ms. Johnson, seconded by Mr. Adjarian, and carried unanimously, the minutes of the Board Meeting of May 13, with corrections, were approved.

Mr. Wolk expressed that he would like the minutes to reflect more of the tone of what is said at the board meetings.

Item 4 - Chairman's, Board Members', State Board Liaison's and Executive Officer's Reports

The written reports prepared by the Board Members and Executive Officer were included in the Board Members' packets.

Chairman Kelley presented this years Customer Service Award to staff member Rebecca Stewart.

Mr. Milch announced that the Senate Rules Committee was going to let his confirmation die. He said he enjoyed working with the Board. Chairman Kelley said he sincerely regretted that the Senate did not confirm Mr. Milch's appointment and said he made a significant contribution to the Board.

Ms. Johnson talked about the Bay Panel report. Chairman Kelley asked Ms. Johnson to attend the last Bay Panel meeting, ~~and asked that Regional Board staff pick up the responsibilities of the Bay Panel.~~ He also said he wanted to discuss the Bay Panel issue at the July workshop.

Mr. Adjarian noted that as the Board's liaison to the International Boundry and Water Commission on Border issues he, along with Mr. Stubchaer and Mr. Robertus, would be attending a CalBECC meeting in Mexicali. Chairman Kelley

thanked Mr. Adjarian for the time he is putting into the Border issues.

Chairman Kelley spoke about the Chair's meeting that he attended and that he raised the issue with the State Board about the need for additional staff resources. Chairman Kelley also talked about reallocation, the 303(d) Listing of Impaired Water Bodies, the TMDL issue, and correspondence from U.S. EPA regarding the Riverside County permit.

Executive Officer Robertus noted that the U.S. EPA would be visiting the San Diego Regional Water Quality Control Board in July.

Item 5 - Consent Calendar

NPDES Permit: Padre Dam Municipal Water District , Padre Dam Water Recycling Facility, San Diego County: Renewal of NPDES Permit No. CA0107492 (Tentative Order No. 98-60) (Rosalind Dimenstein).

Upon motion by Mr. Adjarian, seconded by Mr. Baglin, Order No. 98-60 was unanimously approved.

Item 12 - Status Report on U.S. Navy's Regionalization Program (John Robertus)

U.S. Navy Captain Wayne Thornton gave the presentation for this item.

Item 6 - NPDES Permit: Waste Discharge Requirements for the United States Navy Graving Dock located at Naval Station San Diego (Tentative Order No. 98-53; NPDES No. CA0107867) (Bruce Posthumus and Susan Pease)

Mr. Robertus gave a brief history of the permit. Chairman Kelley said he needed guidance from Mr. Robertus and the Navy as to when the Navy permits would be in place.

Senior staff member Bruce Posthumus gave the presentation. Board Members made comments and asked questions.

Other speakers:

Commander Erick Armstrong, U.S. Navy
Brian Gordon, U.S. Navy
Nicole Capretz, Environmental Health Coalition

Mr. Robertus recommended closing the hearing and extending the written comment period for 30 days.

Board Members discussed the item. Chairman Kelley asked Region Board staff to continue working with the Navy on the permit and redraft the permit after receiving additional comments.

Chairman Kelley closed the Public Hearing leaving the public comment period open for 30 days.

Item 7 - Site-Specific Variance Order No. 98-63 from certain monitoring and upgrade requirements for underground storage tanks located at Units 2 and 3, San Onofre Nuclear Generating Station, 5000 Pacific Coast Highway, San Onofre, San Diego County (Corey Walsh)

This item was postponed to a future meeting.

Item 8 - Waste Discharge Requirements for CDE Resources, Inc. and Sim J. Harris Company, Class II Waste Management Facility for Treatment of Contaminated Soils, San Diego County (Tentative Addendum No. 1 to Order No. 98-23) (Brian McDaniel)

This item was postponed to a future meeting.

Item 9 - Regional Board consideration of project priority lists for Federal Clean Water Act Section 205(j) and 319(h) grant funds (Greig Peters)

Senior staff member Greig Peters gave the presentation on this item and recommended that the Board adopt resolutions 98-71 and 98-72.

Board Members asked questions.

Upon motion by Ms. Johnson, seconded by Mr. Piersall, Resolutions No. 98-71 and No. 98-72 were approved.

Item 10 - Rescission of Cleanup and Abatement Order No. 89-109, Brotherton Ranch, San Diego County (Kristin Schwall)

Staff member Kristin Schwall gave the presentation on the item.

Other speakers:

J. Gregory, Property owner next to Brotherton Ranch
Gary Chapman, Land surveyor

Upon motion by Mr. Wolk, seconded by Mr. Trimble, Cleanup and Abatement Order No. 89-109 was rescinded unanimously. Chairman Kelley directed staff to do an investigation on the

current situation brought forward by J. Gregory at the meeting.

Item 11 - City of San Diego: Consideration of imposition of civil monetary liabilities on the City of San Diego for violations of Order No. 96-04, General Waste Discharge Requirements Prohibiting sanitary Sewer Overflows by Sewage Collection Agencies (Tentative Civil Liability Order No. 98-64) (John Phillips)

Senior staff member Robert Morris gave the presentation on this item.

Other speaker:

Dave Schlesinger, City of San Diego

Board Members asked questions.

Mr. Robertus recommend leaving the ACL intact at \$100,000 but suspending a major portion of it so that the fine does not exceed \$25,000 or reducing the ACL amount to not more than \$25,000.

A motion was made by Mr. Day, seconded by Mr. Milch, to impose an ACL of \$10,000. The motion was opposed by Judy Johnson, Fred Adjarian, Kent Trimble, Chairman Kelley, Frank Piersall, and Jim Milch, therefore the motion did not pass.

A motion was made by Ms. Johnson, seconded by Mr. Adjarian, to dismiss the complaint and not assess the ACL. The motion carried with opposition from Charley Wolk and Wayne Baglin.

Item 15 - Status of Compliance: City of Coronado North Beach Nuisance Condition: Cleanup and Abatement Order No. 97-69 (Whitney Ghoram and Frank Melbourn)

Mr. Robertus explained that the purpose for the status report was due to Board Members asking that this matter be brought back before the Board.

Other speakers:

Mike Edwards, City of Coronado
Steve Kirkpatrick, City of Coronado
Homer Bludau, Coronado City Manager
Chris Gonaver, County of San Diego
Carey Cooper, San Diego Bay Keeper
Steven Ogles, Coronado Friends of the Beach
Russell Elwell, Coronado Friends of the Beach
Ken Moser, San Diego Bay Keeper

Board Members asked questions and made comments.

Mr. Robertus made closing comments. Chairman Kelley asked Mr. Robertus to request a copy of the Woodward-Clyde contract from the City of Coronado and that the staff have all monitoring data collected by either the City or the County made available to them. Chairman Kelley also asked Mr. Robertus to write up a draft Cease and Desist Order for the City of Coronado and put the item back on the agenda in July.

Item 13 - Status of Compliance: U.S. Marine Corps Base Camp Pendleton, Cease and Desist Orders for Sewage Treatment and Disposal Facilities (John Phillips)

Lupe Armas from the Marine Corps Base Camp Pendleton, Environmental Security, gave the presentation.

Board Members asked questions.

Item 14 - Status of Compliance: Chatham Brothers Oversight Report (Common counsel for the Chatham PRP Group requested to give this status report to the Board) (John Anderson)

Mr. Robertus introduced the item.

Gordon Baesel, Chuck McLaughlin, and Mike Palmer gave the status report.

Item 16 - Executive Session - ^{may meet} Consideration of Initiation of Litigation. The Regional Board ~~met~~ in closed session to consider initiating criminal prosecution against persons who are alleged to have violated the Porter-Cologne Water Quality Control Act or the federal Clean Water Act.

Executive Session - Personnel

The Regional Board may meet in closed session to consider personnel matters involving exempt employees [Authorized under Government Code Section 11126(a)]

The Executive Sessions were not held.

Item 17 - Arrangements for Next Meeting and Adjournment
Wednesday, July 8, 1998 - 9:00 a.m.
Board workshop
CA Regional Water Quality Control Board
San Diego Region
9771 Clairemont Mesa Blvd., Suite A
San Diego, California

There being no further business, the meeting adjourned at
4:40 p.m.

These minutes were prepared
by:

Lori Costa
Executive Assistant

Signature of Executive Officer:

John H. Robertus



Linda S. Adams

Secretary for

State Water Resources Control Board

Office of Research, Planning, and Performance

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FAX (916) 341-5284 • <http://www.waterboards.ca.gov>



Arnold Schwarzenegger

Governor

TO: Leo Sarmiento
Office of Enforcement

FROM: Gerald Horner
Economist

DATE: July 13, 2009

SUBJECT: Economic Benefit of Non-Compliance and Ability to Pay: City of San Diego

The Economics Unit of the Office of Research, Planning, and Performance of the State Water Resources Control Board has calculated the economic benefit of the City of San Diego violations of State Water Resources Control Board Order 2006-0003, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems. The estimate of economic benefits of non-compliance was made using U.S. Environmental Protection Agency's (USEPA) BEN Model that is recommended by the State Water Board's Enforcement Policy¹. In addition, an analysis of the City of San Diego's ability to pay was conducted.

Summary and Conclusions

The economic benefit to the City of San Diego in this case, as determined by the Prosecution Team, was realized when the City was not required to treat the 381,185 gallons of raw sewage discharged on August 20-24, 2007. The cost to treat the sewage is estimated at \$4,514. The total economic benefit to the City for not treating the sewage discharged is estimated to be \$5,031 if the penalty is paid before 1/1/2010.

San Diego has the ability to pay the administrative civil liability set forth in the Administrative Civil Liability Complaint issued in July, 2009. This conclusion is supported with the following facts:

- (1) In 2006, San Diego's population was approximately 1.26 million with medium household income higher than the State average;
- (2) The percent of the population below the poverty line and unemployment are both less than State averages;
- (3) The City of San Diego's general fund budget is projected to be \$1.19 billion in the fiscal year 2009, of which \$397 million is the sewer enterprise fund.
- (4) The proposed ACLC which amounts to \$620,277.50 is approximately four percent of the \$17.1 million Public Liability Fund making payment affordable without jeopardize the necessary functions of the City.

¹ State Water Resources Control Board, "Water Quality Enforcement Policy", February 19, 2002, Page 40.



Violation of Waste Discharge Requirements

The City of San Diego had a sanitary sewer overflow (SSO) event on August 20-24, 2007, south of 12242 Escala Drive, resulting in discharge of 381,185 gallons of raw sewage to Green Valley Creek which flows into Lake Hodges. This caused the San Diego Regional Water Quality Control Board to issue a Notice of Violation (NOV) and Investigative Order No. R9-2007-0199. Information related to the discharge is detailed in the NOV. The Regional Board requested that State Water Resources Control Board's Office of Enforcement (OE) review, investigate and determine permit compliance regarding the SSO. OE has requested assistance from the Office of Research Planning and Performance (ORPP) in determining the City's economic benefit related to the discharge/SSO and the City's ability to pay the Administrative Civil Liability resulting from the SSO.

California Water Code Section 13385(e)

Section 13385(e) of the Water Code provides guidelines on what will be considered in determining the amount of a civil liability associated with violations of waste discharge requirements. This section reads as follows (emphasis added):

"(e) **In determining the amount of any liability imposed 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.**"

State Water Resources Control Board Water Quality Enforcement Policy

The current version of the Water Quality Enforcement Policy was adopted February 19, 2002. It is now under revision and the Section VII Monetary Assessment in Administrative Civil Liability (ACL) Actions is being changed to include additional provisions. In relation to the discharger, only two factors must be assessed in the final calculation for liability in this case: the economic benefit incurred by the City of San Diego as a result of the discharge; and the City's ability to pay.

Economic Benefit of Non-Compliance--The USEPA BEN Model

As recommended by the State Water Board's Enforcement Policy, the estimate of economic benefits of non-compliance was made using USEPA's BEN Model (an overview of the BEN model is provided as an attachment to this memo).

The Prosecution Team has determined that the discharge could have been prevented if the discharger responded in a timely fashion to the public odor complaint of the SSO. The economic benefit the City realized was in the benefit of not treating the 381,185 gallons of raw sewage that was discharged to Green Valley Creek which flowed into Lake Hodges.

July 13 2009

The cost of not treating the sewage was calculated using the sewer rate schedule. The sewer flat rate charge for a single family home is \$12.31 for two months plus \$2.89 per hundred cubic feet of sewage. The sewer based charge for the single residential homes upstream of where the discharge first occurred at Man Hole # 108 (MH-108) (total of 494 single family homes - see attachment A of staff report) would be $494 \times \$12.31/2 = \$3,041$. The total estimated cost for collection/treatment of the 381,185 gallons (509.6 HCF) would be: $\$3,041$ plus $509.6 \times \$2.89 = \$4,514$.

The following table contains the present value calculations made by the BEN model, including the data used and the assumptions that were made. If the penalty payment is made by January 1, 2010, the economic benefit the City received from the discharge, including interest, is estimated at \$5,031.

City of San Diego: Treatment of spilled sewage

Present Values as of Noncompliance Date (NCD),		8/24/2007
A) On-Time Capital & One-Time Costs ⁽¹⁾		\$4,514 *
B) Delay Capital & One-Time Costs ⁽²⁾		\$0 *
C) Avoided Annually Recurring Costs ⁽³⁾		\$0 *
D) Initial Economic Benefit (A-B+C) ⁽⁴⁾		\$4,514 *
E) Final Economic Benefit at Penalty Payment Date,⁽⁵⁾		1/1/2010 \$5,031 *
Data and Assumptions		
Compliance Date		1/1/2010
Tax Status	Municipality, which pays no taxes	*
State Tax Schedule	CA	*
Discount/Compound Rate	4.7%	*
Discount/Compound Rate Calculated By:	BEN	*
Cost Estimates Calculated By:	BEN	*
<u>Capital Investment:</u>		
Project Cost Estimate		\$0
Date of Capital Cost Estimate		Not Applicable
Cost Index for Inflation		Not Applicable *
On-Time Date and Implicit Annual Inflation Rate	8/24/2007	Not Applicable *
Delay Date and Implicit Annual Inflation Rate	1/1/2010	Not Applicable *
Consider Future Replacement (Useful Life)		Not Applicable (Not Applicable)
<u>One-Time, Nondepreciable Expenditure:</u>		
Cost Estimate		Avoided \$4,514
Date of One-Time, Nondepreciable Expenditure Estimate		24-Aug-2007
Cost Index for Inflation		Producer Cost Index *
On-Time Date and Implicit Annual Inflation Rate	8/24/2007	Not Applicable
Delay Date and Implicit Annual Inflation Rate	1/1/2010	Not Applicable
Tax Deductible?		n
<u>Annually Recurring Costs:</u>		
Cost Estimate		\$0
Date of Annual Recurring Cost Estimate		1/1/2009
Cost Index for Inflation		Not Applicable
<u>User-Customized Specific Cost Estimates:</u>		
On-Time Capital Investment		Not Applicable
Delay Capital Investment		
On-Time Nondepreciable Expenditure		
Delay Nondepreciable Expenditure		

(1) = Capital Cost NCD (-4514) + Replacement Cost (0)
(2) = Capital Cost CD (0) * PV Factor (0.897320708574807)
(3) = PV of Avoided Annual Costs
(4) As of DNC
(5) = D) Initial Economic Benefit / NCD-PPD PV Factor

*Calculated by: BEN Version: 4.5.0, 10/14/2008

Date of Analysis: 6/29/09 4:53 PM

Ability to Pay and Ability to Continue in Business

Step 6 of the proposed Enforcement Policy is to determine the ability to pay the Total Base Liability Amount of the ACL and to stay in business. The objective is to adjust the ACL to an amount that the discharger can reasonably pay and still bring operations into compliance. Since a government entity cannot file bankruptcy, their existence is not in jeopardy.

Comparing a city's demographic characteristics to the state or national characteristics is an indication of the ability to pay an environmental assessment. The demographic analysis provides a better understanding of the community's ability to financially support public functions. An affordability analysis of the city's finances can also be conducted. It involves calculations of the amount of currently available funds and then, if necessary, the amount of funds available through financing.

In 2006, the year prior to the discharge, the City of San Diego had an estimated population of 1,264,263 (US Census, 2006). At that time, San Diego's median household income (MHI) was \$60,185 and the State MHI was \$58,361. Their unemployment rate was 3.4 percent and poverty rate was 9.1 percent. The State's unemployment rate was 4.4 and the poverty rate was 13 percent. The poverty rate is the percent of the population that falls below a federally predetermined level.

The City of San Diego's general fund budget is projected to be \$1.19 billion in the fiscal year 2009. In addition, an enterprise fund is used to collect \$397 million in sewer fees to operate, maintain and repair the sewer collection system and wastewater treatment plants.

The City has established a Public Liability Reserve Fund to insulate General Fund services from a detrimental payout if the City were found liable in a large claim or claims. The City of San Diego Fiscal Year 2010 Annual Budget presents the City's public liability reserve fund policy goals and fiscal recovery plan. It is the City's goal to maintain dedicated fiscal reserves equal to but not less than 50 percent of the value of the outstanding claims and to reach this level of reserve by Fiscal Year 2014.

The Fiscal Year 2010 goal for the Public Liability Reserve is 15.0 percent of outstanding claims value. Current public liabilities are estimated to be \$114.5 million in filed claims. The Fiscal Year 2010 Proposed Budget includes an allocation of \$25.1 million which will increase the reserve level to \$17.1 million. The ACL which amounts to \$620,277.50 is approximately four percent of the \$17.1 million Public Liability Fund making payment affordable without jeopardizing the necessary functions of the City.

Attachment: The USEPA BEN Model

The U.S. Environmental Protection Agency developed the BEN model to calculate the economic benefit a violator derives from delaying and/or avoiding compliance with environmental statutes. In general, EPA uses the model to assist its own staff in developing settlement penalty figures. A similar procedure has not been developed by the State Water Resources Control Board because the procedure used by BEN is independent of specific Federal or State policies or regulations.

Compliance with environmental regulations usually entails a commitment of financial resources; both initially (in the form of a capital investment or one-time non-depreciable expenditure) and over time (in the form of annually recurring costs). These expenditures might result in better protection of public health or environmental quality, but are unlikely to yield any direct financial return.

Economic benefit represents the financial gains that a violator accrues by delaying and/or avoiding such pollution control expenditures. Funds not spent on environmental compliance are available for other profit-making activities or, alternatively, avoids the costs associated with obtaining additional funds for environmental compliance.

The appropriate economic benefit calculation should represent the amount of money that would make the violator indifferent between compliance and noncompliance. If the enforcement agency fails to recover through a civil penalty at least this economic benefit, then the violator will retain a gain. Because of the precedent of this retained gain, other regulated companies may see an economic advantage in similar noncompliance, and the penalty will fail to deter potential violators. Economic benefit does not represent compensation to the enforcement agency as in a typical "damages" calculation for a tort case, but instead is the minimum amount by which the violator must be penalized so as to return it to the position it would have been in had it complied on time.

The economic benefit calculation must incorporate the economic concept of the "time value of money." Stated simply, a dollar today is worth more than a dollar tomorrow, because you can invest today's dollar to start earning a return immediately. Thus, the further in the future the dollar is, the less it is worth in "present-value" terms. Similarly, the greater the time value of money (i.e., the greater the "discount" or "compound" rate used to derive the present value), the lower the present value of future costs.

To calculate a violator's economic benefit, BEN uses standard financial cash flow and net present value analysis techniques, based on modern and generally accepted financial principles. First, BEN calculates the costs of complying on-time and of complying late, adjusted for inflation and tax deductibility. To compare the on-time and delayed compliance costs in a common measure, BEN calculates the present value of both streams of costs, or "cash flows," as of the date of initial noncompliance. BEN derives these values by discounting the annual cash flows at an average cost of capital throughout this time period.

BEN can then subtract the delayed-case present value from the on-time-case present value to determine the initial economic benefit as of the noncompliance date. Finally, BEN compounds this initial economic benefit forward to the penalty payment date at the same cost of capital to determine the final economic benefit of noncompliance.

The BEN model focuses exclusively on the economic benefit from delayed and/or avoided costs: its analysis encompasses only the cost differential between compliance and noncompliance. BEN thereby

employs a simplifying assumption that the finances of a violator's compliant and noncompliant conditions are identical but for the compliance cost differential.

BEN considers five tax filing conditions that affect tax and discount/rates. Municipalities and federal facilities have a tax-exempt status and applies their cost of debt when calculating present values. BEN also zeros out the tax rates for a non-for-profit, but uses the corporate debt interest rate as the discount/compound rate.

The capital investment is the cost of designing, purchasing, and installing the pollution control equipment necessary to remedy the violations; these are expenditures the violator generally delayed making. Annually recurring costs are those costs associated with operating and maintaining the required pollution control equipment that the violator avoided during the period of violations.

The noncompliance date is generally when the first violation of the environmental requirement occurred. BEN uses this as the proxy for when the violator should have actually incurred the expenditures necessary for compliance. Since compliance expenditures must often occur far in advance of actual legal compliance, it is conservative to use the date by when the violator should have completed installation of the necessary pollution control equipment and had such equipment fully operational. The benefit from delayed and/or avoided expenditures generally increases with the length of the delay period. An earlier noncompliance date (holding the compliance date constant) will, in virtually all cases, increase the benefit figure.

The compliance date is when the violator came into compliance with environmental requirements or the date the violator will achieve compliance. BEN once again uses this as the proxy for when the violator actually did -- or will -- incur the expenditures necessary for compliance.

The dates are a major consideration in the BEN analysis. As the interval of noncompliance increases, the economic benefit generally increases. For each month that the violator delays compliance, it delays capital and one-time costs and avoids operation and maintenance expenses.