

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

**In the matter of:  
City of San Diego**

**COMPLAINT NO. R9-2016-0155  
FOR  
ADMINISTRATIVE CIVIL LIABILITY**

**Violations of Order No.  
R9-2007-0001**

**Place ID: CW-225222**

**July 18, 2016**

**THE CITY OF SAN DIEGO IS HEREBY GIVEN NOTICE THAT:**

1. The City of San Diego (Discharger) has violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) may impose civil liability pursuant to section 13385 of the California Water Code (CWC).
2. This Administrative Civil Liability Complaint is issued under authority of CWC section 13323.
3. Discharger owns and operates a municipal separate storm sewer system (MS4) in San Diego County, California. Discharger is required to prohibit discharges from its MS4 that contain pollutants which have not been reduced to the maximum extent practicable (MEP) in compliance with requirements of San Diego Water Board Order No. R9-2007-0001, NPDES No. CAS0108758, *Waste Discharge Requirements for Urban Runoff From the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority.*
4. The primary storm water pollutant at construction sites is excess sediment. Excess sediment can cloud the water, which reduces the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas, and impede navigation in waterways. Sediment also transports other pollutants such as nutrients, bacteria, metals, organic contaminants (i.e., pesticides and PCBs) and oils and greases.
5. Provision D.2. of San Diego Water Board Order No. R9-2007-0001 states, "Each Copermittee shall implement a construction program which meets the requirements of this section, reduces construction site discharges of pollutants from the MS4 to the MEP, and prevents construction site discharges from the MS4 from causing or contributing to a violation of water quality standards."

Complaint No. R9-2016-0155  
City of San Diego  
Violation of Order No. R9-2007-0001

2

July 18, 2016

6. Provision D.2.c.(3) of San Diego Water Board Order No. R9-2007-0001 states, "Each Copermittee shall implement, or require the implementation of, the designated minimum BMPs and any additional measures necessary to comply with this Order at each construction site within its jurisdiction year round."
7. Provision D.2.d.(6)(b) of San Diego Water Board Order No. R9-2007-0001 states, "Inspections conducted by each Copermittee shall include assessment of compliance with Permittee ordinances and permits related to urban runoff, including the implementation and maintenance of designated minimum BMPs."
8. Provision D.2.d.(6)(c) of San Diego Water Board Order No. R9-2007-0001 states, "Inspections conducted by each Copermittee shall include assessment of BMP effectiveness."
9. Provision A.2 of San Diego Water Board Order No. R9-2007-0001 states, "Discharges from MS4s containing pollutants which have not been reduced to the maximum extent practicable (MEP) are prohibited."
10. Provision D.2.d.(5) of San Diego Water Board Order No. R9-2007-0001 states, "Based upon inspection findings, each Copermittee shall implement all follow-up actions (i.e., re-inspection, enforcement) necessary to comply with the Order."
11. Provision D.2.e of San Diego Water Board Order No. R9-2007-0001 states, "Each Copermittee shall develop and implement an escalating enforcement process that achieves prompt corrective actions at construction sites for violations of the Copermittee's water quality protection permit requirements and ordinances. This enforcement process shall include authorizing the Copermittee's construction site inspectors to take immediate enforcement actions when appropriate and necessary. The enforcement process shall include appropriate sanctions such as stop work orders, non-monetary penalties, fines, bonding requirements and/or permit denials for non-compliance."

### **ALLEGED VIOLATIONS**

12. Discharger violated Provision D.2. of San Diego Water Board Order No. R9-2007-0001 by failing to implement a construction program that reduces construction site discharges of pollutants from the MS4 to the MEP.
13. Discharger violated section D.2.c.(3) of San Diego Water Board Order No. R9-2007-0001 by failing to require BMP implementation during the dry season that addresses rain events that may occur during the dry season.

Complaint No. R9-2016-0155  
City of San Diego  
Violation of Order No. R9-2007-0001

3

July 18, 2016

14. Discharger violated section D.2.d.(6)(b) of San Diego Water Board Order No. R9-2007-0001 by failing to conduct inspections that assess compliance with ordinances and permits related to urban runoff, including the implementation and maintenance of designated BMPs at construction sites.
15. Discharger violated section D.2.d.(6)(c) of San Diego Water Board Order No. R9-2007-0001 by failing to conduct inspections that assess BMP effectiveness at construction sites.
16. Discharger violated section A.2 of San Diego Water Board Order No. R9-2007-0001 by failing to ensure that discharges from construction sites have been reduced to the MEP prior to discharging into the MS4.
17. Discharger violated section D.2.d.(5) of San Diego Water Board Order No. R9-2007-0001 by failing to implement all follow-up actions (i.e., re-inspection, enforcement) necessary to comply with San Diego Water Board Order No. R9-2007-0001.
18. Discharger violated section D.2.e of San Diego Water Board Order No. R9-2007-0001 by failing to escalate enforcement to achieve prompt corrective actions at construction sites for violations of local and State ordinances.
19. The details of these violations are set forth in full in the accompanying Technical Analysis, which is incorporated herein by this reference as if set forth in full.

#### **MAXIMUM LIABILITY**

20. Pursuant to CWC section 13385, subdivision (a), any person who violates Water Code section 13376 is subject to administrative civil liability pursuant to Water Code section 13385, subdivision (c), in an amount not to exceed the sum of both of the following: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
21. The alleged violations, set forth in full in the accompanying Technical Analysis, constitute violations subject to Water Code section 13385. The maximum liability that the San Diego Water Board may assess pursuant to Water Code section 13385, subdivision (c) is **\$22,680,000**.

Complaint No. R9-2016-0155  
City of San Diego  
Violation of Order No. R9-2007-0001

4

July 18, 2016

### **MINIMUM LIABILITY**

22. CWC section 13385, subdivision (e) requires that, at a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation(s). The State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) further instructs the Regional Water Boards to assess liability against a violator at least ten percent higher than the economic benefit realized from the violation so that liabilities are not construed as the cost of doing business and so that the assessed liability provides a meaningful deterrent to future violators.
23. As detailed in the incorporated Technical Analysis, and based on a calculated economic benefit amount of **\$4,195,335**, the minimum liability the San Diego Water Board should assess the Discharger is **\$4,614,868** (calculated economic benefit \$4,195,335 x 1.1).

### **PROPOSED LIABILITY**

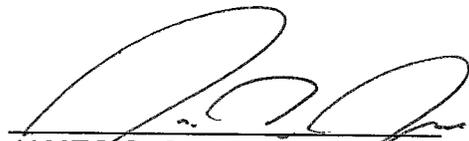
24. Pursuant to CWC section 13385, subdivision (e), in determining the amount of any civil liability, the San Diego Water Board shall consider the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges; and with respect to the Discharger, the ability to pay, the effect on the Dischargers' ability to continue in business, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters as justice may require.
25. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385, subdivision (e). The required factors have been considered for the violations alleged herein using the methodology in the Enforcement Policy, as explained in detail in the Technical Analysis and summarized in Attachment 1.
26. Based on consideration of the above facts, the applicable law, and after applying the penalty calculation methodology in section VI of the Enforcement Policy, the San Diego Water Board Prosecution Team recommends that the San Diego Water Board impose the minimum civil liability against the Discharger in the amount of **\$4,614,868** for the violations alleged herein and set forth in full in the accompanying Technical Analysis.

Complaint No. R9-2016-0155  
City of San Diego  
Violation of Order No.R9-2007-0001

5

July 18, 2016

Dated this 18th day of July, 2016.



JAMES G. SMITH

Assistant Executive Officer

Signed pursuant to the authority delegated  
by the Executive Officer to the Assistant  
Executive Officer

Attachment 1: Penalty Methodology Decisions

For internal use only	
PIN Number	CW-255222
WDID	9 000000510
Regulatory Measure ID	406987
Violation IDs	889367 964457 985712

Attachment 1  
Discharger: City of San Diego

Penalty Methodology Decisions  
ACL Complaint No. R9-2016-0155

Step 1: Potential Harm Factor				
Violations	Harm/Potential Harm to Beneficial Uses [ 0 - 5 ]	Physical, Chemical, Biological or Thermal Characteristics [ 0 - 4 ]	Susceptibility to Cleanup or Abatement [ 0 or 1 ]	Total Potential for Harm [ 0 - 10 ]
Violation 2 (Discharges)	4	2	1	7

Step 2: Assessments for Discharge Violations						
Violations	Per Gallon Factor					Statutory or Policy Max per Gallon [ \$ ]
	Potential for Harm [ 0 - 10 ]	Deviation from Requirement [ minor, moderate, major ]	High Volume Discharges [ yes / no ]	Gallons Discharge	Total Per Gallon Factor	
No Per Gallon Discharge Violations						

Violations	Per Day Factor				Statutory Max per Day [ section 13385 ]
	Potential for Harm [ 0 - 10 ]	Deviation from Requirement [ minor, moderate, major ]	Total Per Day Factor	Days of Violation	
Violation 2 (Discharges)	7	Moderate	0.2	19	\$10,000

Step 3: Per Day Assessments for Non-Discharge Violations					
Violations	Per Day Factor				Statutory/ Adjusted Max [ section 13385 ]
	Potential for Harm [ minor, moderate, major ]	Deviation from Requirement [ minor, moderate, major ]	Total Per Day Factor	Days of Violation	
Violation 1 (BMPs)	Major	Major	0.85	1663	\$10,000
Violation 3 (Enforcement)	Moderate	Major	0.55	586	\$10,000

Initial Liability From Steps 1 - 3	
Violation 1: $(.85) \times (1) \times (10,000) =$	\$8,500
Violation 2: $(0.2) \times (1) \times (\$10,000) =$	\$2,000
Violation 3: $(0.55) \times (1) \times (\$10,000) =$	\$5,500

Step 4: Adjustments					
Violations	Culpability [ 0.5 - 1.5 ]	Cleanup and Cooperation [ 0.75 - 1.5 ]	History of Violations	Multiple Violations (Same Incident)	Adjusted Days of Violation
Violation 1	1.5	1.2	1.2	n/a	170
Violation 2	1.5	1.2	1.2	n/a	n/a
Violation 3	1.5	1.2	1.1	n/a	25

Step 5: Total Base Liability Amount	
(Per day Factor x statutory maximum) x (Step 4 Adjustments)	
Violation 1: $(\$8,500) \times (1.5) \times (1.2) \times (1.2) =$	\$18,360
Violation 2: $(\$2,000) \times (1.5) \times (1.2) \times (1.2) =$	\$4,320
Violation 3: $(\$5,500) \times (1.5) \times (1.2) \times (1.1) =$	\$10,890

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

Step 7: Other Factors as Justice May Require	
Costs of Investigation and Enforcement	\$40,011
Penalty Adjustment for Violation 2	\$107,920

Step 8: Economic Benefit
\$4,195,335

Step 9: Maximum and Minimum Liability Amounts		
	Minimum	Maximum
Violation 1	\$4,614,868	\$16,630,000
Violation 2		\$190,000
Violation 3		\$5,860,000

Step 10: Final Liability Amount
(total base liability) + (other factors)
\$4,614,868