



California Regional Water Quality Control Board San Diego Region



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<http://www.waterboards.ca.gov/sandiego>

November 19, 2009

CERTIFIED-RETURN RECEIPT REQUESTED
7009 1410 0002 2347 5371

In reply refer to:
209139:rstewart

Mr. William Kowba
Interim Superintendent
San Diego Unified School District
4100 Normal Street, Room 2231
San Diego, California 92103

Dear Mr. Kowba:

NOTICE OF HEARING AND ISSUANCE OF COMPLAINT NO. R9-2009-0175 FOR ADMINISTRATIVE CIVIL LIABILITY AGAINST THE SAN DIEGO UNIFIED SCHOOL DISTRICT FOR VIOLATION OF ORDER NO. 97-11

Enclosed find Complaint No. R9-2009-0175, for Administrative Civil Liability against the San Diego Unified School District (Discharger) for the amount of \$227,000 for violation of Directive E.8 of *Order No. 97-11, General Waste Discharge Requirements for Post-Closure Maintenance of Inactive Nonhazardous Waste Landfills Within the San Diego Region*. The violations addressed in the Complaint resulted from failure to submit five semiannual monitoring reports.

Waiver of Hearing

Pursuant to California Water Code Section 13323, the California Regional Water Quality Control Board, San Diego Region (Regional Board) will hold a hearing on the Complaint no later than 90 days after it is served. The Discharger may elect to waive its right to a hearing before the Regional Board. Waiver of the hearing constitutes admission of the validity of the allegation of violation in the Complaint and acceptance of the assessment of civil liability in the amount of \$227,000 as set forth in the Complaint. For the Regional Board to accept the waiver of the Discharger's right to a public hearing, the Discharger must submit the following by 5 P.M., **Monday, December 21, 2009**.

1. The enclosed waiver form signed by an authorized agent of the Discharger;

California Environmental Protection Agency

Mr. William Kowba
San Diego Unified School District

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November 19, 2009

2. A check for the full amount of civil liability of \$227,000 made out to the "Waste Discharge Permit Fund"; and
3. Verification that the enclosed public notice has been published in a newspaper circulated in the project's area.

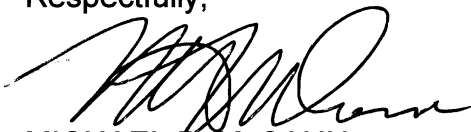
Public Hearing

Alternatively, if the Discharger elects to proceed to a public hearing, a hearing is tentatively scheduled to be held at the Regional Board meeting on February 10, 2010. The meeting is scheduled to convene at the Regional Board Office, 9174 Sky Park Court, Suite 100, San Diego, CA and the meeting will begin at 9 A.M. At that time, the Regional Board will accept testimony and public comment and decide whether to affirm, reject, or modify the proposed liability, or whether to refer the matter for judicial civil action.

Enclosed you will find procedures I am recommending that the Regional Board follow in conducting the hearing. Please note that comments on the proposed procedures are due by **November 30, 2009** to the Regional Water Board's advisory attorney, Catherine Hagan at the address indicated in the hearing procedures.

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 Rebecca Stewart at (858) 467-2966 or Rstewart@waterboards.ca.gov.

Respectfully,



MICHAEL P. McCANN
Assistant Executive Officer

MPM:jh:rls

- Enclosures:
- (1) Complaint No. R9-2009-0175
 - (2) Staff Report
 - (3) Waiver of Public Hearing Form
 - (4) Newspaper Notice of Waiver of Public Hearing
 - (5) Hearing Procedures

cc: Ms. Shelia Jackson, President, Board of Education, San Diego Unified School District, 4100 Normal Street, Room 2231, San Diego, CA 92103 (with enclosures)

Mr. William Dos Santos, Director, Physical Plant Operations, San Diego Unified School District, 4860 Ruffner Street, San Diego, CA 92111-1522 (with enclosures)

Mr. Bill Prinz, Solid Waste Local Enforcement Agency, City of San Diego, 1010 Second Avenue, Suite 600, MS 606L, San Diego, CA 92101-4998 (with enclosures)

Ms. Vicky Gallagher, LUEG Program Manager, Landfill Management, Department of Public Works, 5201 Ruffin Road, Suite D, San Diego, CA 92123-4310 (with enclosures)

VIA EMAIL ONLY

Christian Carrigan, Office of Enforcement, State Water Resources Control Board, ccarrigan@waterboards.ca.gov (with enclosures)

Catherine Hagan, Office of Chief Counsel, State Water Resources Control Board, chagan@waterboards.ca.gov (with enclosures)

Bob Morris, San Diego Regional Water Quality Control Board
bmorris@waterboards.ca.gov (with enclosures)

Robert Pierce, San Diego Regional Water Quality Control Board
rpierce@waterboards.ca.gov (with enclosures)

CIWQS Place ID	209139
WDID	9 000000916
Reg. Measure No.	371999
Party ID	39632

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

In the matter of:

San Diego Unified School District
Bell Junior High School Landfill
620 Briarwood
San Diego, CA 92139

**Complaint No. R9-2009-0175
for
Administrative Civil Liability**

November 19, 2009

WDID No. 9 000000916
Place ID: 209139

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The San Diego Unified School District is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability pursuant to Section 13350 of the California Water Code (CWC).

WASTE DISCHARGE REQUIREMENTS

2. Since June 14, 2000, the San Diego Unified School District, as the owner of the property with an inactive landfill currently known as the Bell Junior High School Landfill, has been subject to the requirements prescribed in Order No. 97-11, *General Waste Discharge Requirements for Post-Closure Maintenance of Inactive Nonhazardous Waste Landfills Within the San Diego Region*.
3. Order No. 97-11 requires the submittal of semiannual ground water quality monitoring and submittal of semiannual monitoring reports.

ALLEGATIONS

4. The San Diego Unified School District has and continues to violate Directive E.8 of Order No. 97-11 by failing to submit the five semiannual monitoring reports that were due from October 2007 to April 2009 required by Monitoring Provision C of Monitoring and Reporting Program No. 97-11. Additional violations continue to accrue for each semiannual monitoring report that is not submitted.

MAXIMUM LIABILITY

5. CWC section 13350 provides that any person who violates any waste discharge requirement issued by a regional board shall be civilly liable. Section 13350(e)(1) provides that civil liability may be administratively

imposed by a regional board in an amount not to exceed five thousand dollars (\$5,000) for each day of violation.

6. Based on non-submittal of five semiannual monitoring reports, the San Diego Unified School District is alleged to have violated Order No. 97-11 for 908 days (from May 1, 2007 to October 29, 2009). The total maximum liability for this period of violations is four million, five hundred forty five thousand dollars (\$4,540,000).

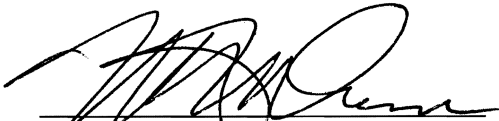
MINIMUM LIABILITY

7. CWC section 13350(e)(1)(B) requires a minimum civil liability of not less than one hundred dollars (\$100) for each day of violation unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327. These factors include the nature, circumstance, extent, and gravity of the violations, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
8. The Regional Board's consideration of the factors listed in paragraph 7 above is contained in the attached, *Staff Report, Proposed Administrative Civil Liability Contained in Complaint No. R9-2009-0175, San Diego Unified School District, Bell Junior High School Landfill*.
9. Based on consideration of the factors, the Regional Board cannot make findings justifying reduction of the proposed civil liability below the statutory minimum of ninety thousand, eight hundred dollars (\$90,800).

PROPOSED LIABILITY

10. After consideration of the factors listed in paragraphs 7, above, it is recommended that the Regional Board impose civil liability against the San Diego Unified School District in the amount of two hundred twenty seven thousand dollars (\$227,000) for failure to submit five semiannual reports required by Order No. 97-11.

Dated this 19th day of November, 2009.



MICHAEL P. McCANN
Assistant Executive Officer

Complaint No. R9-2009-0175
San Diego Unified School District
Bell Junior High School Landfill

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November 19, 2009

CIWQS: Reg Msr ID : 371999
Place ID: 209139
Party ID: 39632
Violation IDs: 847691; 847692; 847693; 847695; 847697

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

STAFF REPORT

**Proposed Administrative Civil Liability
Contained in Complaint No. R9-2009-0175
San Diego Unified School District
Bell Junior High School Landfill**

Noncompliance With

**Order No. 97-11
General Waste Discharge Requirements
For Post-Closure Maintenance of
Inactive Nonhazardous Waste Landfills
Within the San Diego Region**

November 19, 2009

By

**Rebecca Stewart
Sanitary Engineering Associate
Compliance Assurance Unit**

1. INTRODUCTION

This staff report provides a preliminary analysis of factual and analytical evidence supporting administrative assessment of civil liability against the San Diego Unified School District (School District) for violations of Order No. 97-11, *General Waste Discharge Requirements for Post-Closure Maintenance of Inactive Nonhazardous Waste Landfills Within the San Diego Region*. The School District is alleged to have violated Order No. 97-11 for 908 days for a maximum civil liability of four million five hundred forty thousand dollars (\$4,540,000) and a minimum civil liability of ninety thousand eight hundred dollars (\$90,800), pursuant to California Water Code section 13350. The Regional Board's Prosecution Team recommends the assessment of civil liability in the amount of two hundred twenty seven thousand dollars (\$227,000).

2. ALLEGATIONS

The following allegations against the School District are the basis for assessing administrative civil liability and also appear in Complaint No. R9-2009-0715.

2.1. Failure to Submit Semi-annual Monitoring Reports

The School District failed to submit five semiannual monitoring reports in violation of Directive E.8 of Order No. 97-11.

3. BACKGROUND

In 1961 the School District leased property located at 7300 Paradise Valley Road, San Diego, to the County of San Diego, who operated the Bell Junior High School Landfill (Landfill), previously known as the Paradise Valley Landfill and Sweetwater II Landfill, from 1961 to 1966.

In 1968 the School District constructed Bell Junior High School at the property. The school buildings were constructed on native soils east of the Landfill site and a portion of the Landfill site has been used as a part of a playground.

Enrollment in General Waste Discharge Requirements Order No. 97-11

On April 11, 2000, the Regional Board notified Mr. Tom Calhoun, Director of the School District's Facilities Development Department, of its intent to add the Landfill to the list of inactive landfills regulated by Order No. 97-11. In its letter, the Regional Board clearly indicated that this action would require the School District to comply with the requirements prescribed in the Order, including performing water quality monitoring and submitting

monitoring reports. (**Appendix A**).

The School District was provided a copy of tentative Addendum No. 1 to Order No. 97-11 (the mechanism by which the Regional Board would add the Landfill to the requirements of Order No.97-11) on May 12, 2000 for review and comment. The School District failed to comment on the tentative addendum. During a public meeting on June 14, 2000, the Regional Board adopted Addendum No. 1 to Order No. 97-11 without discussion on its consent calendar (**Appendix B**).

The School District's status as a discharger responsible for post-closure maintenance and monitoring, and for payment of annual fees, was not based on the School District's status as an "operator" of the former solid waste disposal site, nor on a determination that waste from the former landfill is causing or contributing to ground water pollution, but rather on its current and continuing ownership of a closed or inactive landfill containing wastes that could affect the quality of the waters of the state.

School District's Failed Challenges to Order No. 97-11

In November 2004 the Regional Board issued a Notice of Violation to the School District due to a slope failure at the Landfill. At that time, the School District performed the necessary maintenance activities to satisfy the requirements of the Notice of Violation, but question its responsibility for compliance with Order No. 97-11 instead of the Landfill operator, the County of San Diego.

In May of 2005 the School District added the Regional Board to a pending lawsuit against the County of San Diego regarding the appropriateness of the Regional Board naming only the School District as the discharger responsible for compliance with Order No. 97-11. The trial court failed to support the School District's argument because the School District failed to seek review of the Regional Board's action within 30 days as required by the Water Code. In September 2006, the court of appeals upheld the trial court's decision.

On November 7, 2005 the School District requested that the Regional Board waive the annual fees associated with the Landfill's regulation under Order No. 97-11 as well as refund of all past fees paid by the School District (**Appendix C**). On January 13, 2006, the Regional Board denied the School District's request because the School District, as the property owner, was designated as a discharger under Order No. 97-11 and the School District failed to object or appeal the Regional Board's designation (**Appendix D**).

The School District petitioned the State Water Resources Control Board (State Board) to review the Regional Board's denial. The State Board

refused to consider the appeal based on a technical distinction in requesting the “suspension” of the imposition of fees and asking for the “rescission” of the fees.

The School District re-filed its request with the Regional Board to “rescind” the imposition of annual fees on June 23, 2006 and again on November 17, 2006.

The Regional Board issued a Notice of Violation to Mr. William Dos Santos the current Director of the School District’s Facilities Development Department on December 6, 2006 for failure to establish and maintain a ground water detection monitoring program and for failure to submit semiannual ground water monitoring reports as required by Monitoring and Reporting Program No. 97-11 (**Appendix E**).

On December 19, 2006, the School District submitted an untimely challenge to the Regional Board’s June 14, 2000 Order imposing monitoring and reporting requirements upon it, rather than the County of San Diego as the Landfill operator, and further requested a waiver of the ground water monitoring and reporting requirements in Order No. 97-11, based on ground water monitoring results compiled as part of the Solid Waste Assessment Test conducted in 2004 by the School District (**Appendix F**). The School District further requested that the Regional Board suspend any further action on the Notice of Violation until a determination was made by either the Regional Board or the State Board regarding its request to rescind the annual fees.

On January 23, 2007, the Regional Board denied the School District’s request to rescind the annual fees and the School District subsequently petitioned the State Board for review of the Regional Board’s decision (**Appendix G**).

On October 12, 2007, the State Board refused to act on the School District’s petition because the School District failed to challenge the Regional Board’s initial decision in June 2000, to name it as the discharger, within the 30 days required by Section 13320 of the California Water Code (**Appendix H**).

Status of Compliance with Order No. 97-11

Since that time, the School District has failed to initiate a ground water monitoring program at the Landfill to provide the Regional Board the information necessary to determine if the Landfill poses a threat to waters of the State.

This enforcement action only alleges violations of the five semiannual monitoring reports required after the School District had the opportunity to

exhaust its options for administrative relief for the December 6, 2006 Notice of Violation. This enforcement action also does not address the annual monitoring reports also required by Order No. 97-11, as the information in the annual report consists of a compilation of past semiannual monitoring events. In addition, the School District continues to accrue violations of Order 97-11. Specifically, this enforcement action does not recommend a penalty for the April-September 2009 semiannual monitoring report that was due on October 30, 2009, because it is not thirty days late as of this date. The Regional Board may initiate additional discretionary enforcement action, with additional recommended civil liabilities, for the School District's failure to file annual reports and for its failure to file the April-September 2009 semiannual report, due on October 30, 2009, in the event it is not timely received.

4. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY

CWC section 13350 states that any person in violation of any waste discharge requirement shall be liability civilly. Pursuant to CWC section 13350(e)(1) and 13350(e)(1)(B), the Regional Board may imposed civil liability of up to five thousand dollars (\$5,000) for each day of violation but shall not impose civil liability less than one hundred dollars (\$100) for each day in which the violation occurs, unless the Regional Board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.

CWC section 13327 specifies the factors that the Regional Board shall consider in establishing the amount of discretionary liability for the alleged violations, which include: the nature, circumstance, extent, and gravity of the violations, the ability to pay, the effect on ability to continue in business, prior history of violation, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

4.1. Allegation: Failure to Submit Semiannual Monitoring Reports Required by Order No. 97-11

4.1.1. Nature, Circumstance, Extent, and Gravity of the Violations

The San Diego Unified School District violated Directive E.8 of Order No. 97-11 by failing to submit five semiannual monitoring reports. Each of the five reports was due after the School District exhausted its options for administrative relief from the monitoring and reporting requirements prescribed in Order No. 97-11. As described in Monitoring and Reporting Program No. 97-11, the School District is required to develop

a ground water quality monitoring program, monitoring ground water quality semiannually; and, report the results of all monitoring activities to the Regional Board on a semiannual basis.

The only ground water monitoring that has been reported to the Regional Board at the site was conducted by the School District for its Solid Waste Assessment Test (SWAT) report in 2004. The monitoring revealed the presence of several hazardous substances, notably volatile organic compounds (VOCs) in ground water downgradient of the Landfill site, including several at concentrations in excess of maximum contaminant levels. While the SWAT report did not definitively attribute these contaminants to the landfill, it also did not definitively rule them out as being derived from the wastes in the landfill. Since the contaminants are consistent with the decomposition and breakdown products associated with the expected constituents of municipal solid waste discharged during the active life of the Landfill, the School District was notified by the Regional Board in January 2007 that it is not entitled to the discretionary waiver of the ground water monitoring offered in Order No. 97-11.

The San Diego Unified School District's failure to comply with the monitoring and reporting directives of Order No. 97-11 deprives the Regional Board of essential information regarding any possible impacts to waters of the State coming from the Landfill.

Failure to submit required monitoring reports has a moderate impact to beneficial uses because the limited ground water quality data available does not definitively rule out the possibility that VOCs found in the ground water in 2004 are not coming from the Landfill.

Failure to submit required monitoring reports is a major deviation from required standards because it renders the Regional Board's monitoring requirements ineffective.

4.1.2. Ability to Pay

The School District has the ability to pay the recommended liability. The School District maintains a Self-Insurance Fund to account for resources committed to self-insurance activities, including liabilities. For the Budget Year 2009-10, the School District had a beginning balance of \$65,335,345 and expects

to end the Budget Year with a reserve of \$57,702,229
(Appendix I).¹

4.1.3. Prior History of Violation

The School District has been subject to the requirements of Order No. 97-11 since June 14, 2000. The School District has failed to submit any semi-annual or annual monitoring reports (28 total) required by Order No. 97-11.

The School District's prior history of violation with regards to failure to submit required monitoring reports supports a substantial amount of discretionary liability.

4.1.4. Degree of Culpability

The School District has exhibited a high degree of culpability with regards to failing to submit the required monitoring reports. In particular, the violations that are the subject of this enforcement action are particularly egregious because they occurred after the School District's challenge to its status as a discharger responsible for the former landfill was denied.

The School District's intentional and negligent behavior supports a substantial amount of discretionary liability.

4.1.5. Economic Benefit or Savings Resulting From the Violation

Regional Board staff estimates that the resources necessary to provide the Regional Board with the information required in the semiannual monitoring reports is approximately \$9,500 per report. Based on this estimation, it is assumed that the School District saved approximately \$47,500 by failing to prepare five semi-annual monitoring reports between April 30, 2007 and April 30, 2009 (Appendix J).

4.1.6. Other Matters as Justice May Require

The Regional Board incurred specific expenses relating to the investigation of the violations alleged in this report as well as the preparation of enforcement documents associated with this enforcement action. Expenditures are ongoing. At this point, final staff costs are expected to range between \$5,000 and \$30,000. As a result, the proposed liability is expected to

¹ 2009-10 San Diego Unified School District Budget Book & District Profile p.52, available at www.sandi.net/budgetbook.pdf

fully recover staff costs. To date, the Regional Board's total expenditures are approximately \$5,000.

4.2. Maximum Civil Liability

Pursuant to CWC section 13350, the maximum civil liability that the Regional Board may assess for violation of any waste discharge requirement is five thousand dollars (\$5,000) for each day of violation.

For failure to submit five semi-annual monitoring reports the total number of days of violation is 908, based on the following:

Report Period	Due Date	# of Days of Violation
October–March 2007	April 30, 2007	181
April–September 2007	October 30, 2007	183
October–March 2008	April 30, 2008	181
April–September 2008	October 30, 2008	182
October–March 2009	April 30, 2009	181
TOTAL NUMBER OF DAYS LATE		908

As a result, the maximum civil liability that can be imposed by the Regional Board for the violations alleged in this enforcement action is four million five hundred forty thousand dollars (\$4,540,000).

4.3. Minimum Civil Liability

Pursuant to CWC section 13350(e)(1)(B), the minimum civil liability that the Regional Board shall assess is not less than one hundred dollars (\$100) per day of violation, or ninety thousand eight hundred dollars (\$90,800).

4.4. Proposed Civil Liability

The proposed amount of civil liability attributed to each violation was determined by taking into consideration the factors discussed in section 4.1., the maximum civil liability that the Regional Board may assess as discussed in section 4.2 and the liability calculation methodology proposed in the revisions to the State Board's Enforcement Policy adopted on October 20, 2009.

The School District violated Monitoring Provision C.1 of Order No. 97-11 for 908 days, and continues to do so. After considering the factors specified in CWC Section 13327, the Regional Board's Prosecution Team does not support lowering the proposed civil

liability below the minimum required liability of ninety thousand eight hundred dollars (\$90,800).

There is justification to assess civil liability higher than the statutory minimum. The alleged violations are major deviations from the requirements. Additionally, there is a moderate potential for harm. The presence of VOCs in a downgradient well, some of which exceed the maximum contaminant levels, creates a reasonable potential that contaminants threatening to negatively impact waters of the State may be coming from the landfill.

The total proposed civil liability in this matter is two hundred fifty dollars (\$250) per day, for 908 days of violation, for a total of two hundred twenty seven thousand dollars (\$227,000).

Appendices

- A. Correspondence, dated April 11, 2000, from the Regional Board to School District regarding intent to enroll in Order No. 97-11
- B. Addendum No. 1 to Order 97-11 and Order No. 97-11, *General Waste Discharge Requirements for Post-Closure Maintenance of Inactive Nonhazardous Waste Landfills within the San Diego Region*
- C. Correspondence, dated November 7, 2005, from Best, Best & Krieger on behalf of the School District regarding waiver of annual fees
- D. Correspondence, dated January 13, 2006, from the Regional Board to School District, regarding denial of waiver of annual fees
- E. Notice of Violation No. R9-2006-0133 from Regional Board to School District regarding failure to submit semiannual monitoring reports
- F. Correspondence, dated December 19, 2006, from Best, Best & Krieger on behalf of the San Diego Unified School District regarding Notice of Violation No. R9-2006-0133
- G. Correspondence, dated January 23, 2007, from Regional Board to School District regarding correspondence from Best, Best & Krieger regarding Notice of Violation No. R9-2006-0133
- H. Correspondence, dated October 12, 2007, from State Board to School District regarding dismissal of petition to waive monitoring requirements

- I. Excerpts from School District's 2009-10 Budget Book & District Profile, pp. 52, 69.
- J. Regional Board's estimated economic savings calculation