



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

---

## San Diego Regional Water Quality Control Board

April 7, 2016

**Certified Mail No.**

7011 0470 0002 8952 7991

Mr. Peter MacLaggan  
Poseidon Resources (Channelside) LLC  
5780 Fleet Street, Suite 140  
Carlsbad, CA 92008

**In reply refer to / attn:**  
**640063: bneill**

Mr. MacLaggan:

**Subject: Notice of Violation No. R9-2016-0112 for Violations of Order No. R9-2006-0065 (as Amended) Waste Discharge Requirements for the Poseidon Resources (Channelside) LLC, Carlsbad Desalination Project, Discharge to the Pacific Ocean via the Encina Power Station Discharge Channel, NPDES No. CA0109223**

Enclosed is Notice of Violation (NOV) No. R9-2016-0112, for violations of Order No. R9-2006-0065 (as amended), *Waste Discharge Requirements for the Poseidon Resources (Channelside) LLC, Carlsbad Desalination Project Discharge to the Pacific Ocean via the Encina Power Station Discharge Channel* (Order). As described in the attached NOV, the violations are subject to further enforcement pursuant to the California Water Code. The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) reserves the right to take any enforcement action authorized by law.

In making the determination of whether and how to proceed with further enforcement action, the San Diego Water Board will consider the severity and effect of the violations, the level of cooperation of Poseidon Resources (Channelside) LLC (Discharger), the time it takes to correct the identified violations, and the sufficiency of the corrections.

In addition to the violations noted in the NOV, the San Diego Water Board offers the following comments regarding the submittal of monitoring reports:

1. The monthly report for August 2015 was initially submitted on-time via the California Integrated Water Quality System (CIWQS) on September 30, 2015. At the Discharger's request, the report was withdrawn and resubmitted on November 25, 2015, to correct the reported flow rate.

Similarly, the monthly report for September 2015 was initially submitted on-time via CIWQS on October 30, 2015. At the Discharger's request, the report was withdrawn and resubmitted on December 9, 2015, to correct the reported flow rate.

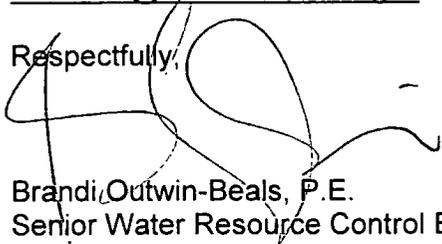
The flow rate discrepancies in August and September 2015 were reportedly due to various tank levels and valve positions being manually opened, resulting in actual flows not being automatically recorded correctly.

2. The monthly report for November 2015 was initially submitted on-time via CIWQS on December 30, 2015. At the Discharger's request, the report was withdrawn and resubmitted on March 1, 2016, to correct the reported flow rate. The flow values at monitoring location M-001 were inadvertently reported as being for the M-INF monitoring location.
3. For many of the constituents being monitored, the monitoring results are reported as a value less than the Reporting Limit, with the Reporting Limit being entered in the value column. Instead, the Discharger should report these values as Not Detected (ND) or Detected but Not Quantified (DNQ). The Method Detection Limit, Minimum Level, and Reporting Limit for each sample must be reported in their respective columns. The electronic Self-Monitoring Reports-2 Discharger User Guide has more information regarding reporting of analytical data and can be found at this website:  
[http://www.waterboards.ca.gov/water\\_issues/programs/ciwqs/docs/chc\\_npdes/esmr2\\_userguide.pdf](http://www.waterboards.ca.gov/water_issues/programs/ciwqs/docs/chc_npdes/esmr2_userguide.pdf)

Please send written correspondence in response to this letter to [SanDiego@waterboards.ca.gov](mailto:SanDiego@waterboards.ca.gov). Electronic documents must be submitted as a single file, in Portable Document Format (PDF) format, and converted to text searchable format using Optical Character Recognition (OCR). All electronic documents must also include scanned copies of all signature pages; electronic signatures will not be accepted. Electronic documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: **640063: bneill**.

For questions pertaining to the subject matter, please contact Ben Neill at (619) 521-3376 or [Ben.Neill@waterboards.ca.gov](mailto:Ben.Neill@waterboards.ca.gov).

Respectfully,



Brandi Outwin-Beals, P.E.  
Senior Water Resource Control Engineer

BNO:bin

Enclosures: NOV No. R9-2016-0112

Cc by email: Sheila Henika, NRG Energy, [Sheila.Henika@nrg.com](mailto:Sheila.Henika@nrg.com)  
Elaine Lukey, City of Carlsbad, [Elaine.Lukey@carlsbadca.gov](mailto:Elaine.Lukey@carlsbadca.gov)  
Robin Greene, California State Parks, [Robin.Greene@parks.ca.gov](mailto:Robin.Greene@parks.ca.gov)  
Jamie Marincola, USEPA, [Marincola.JamesPaul@epamail.epa.gov](mailto:Marincola.JamesPaul@epamail.epa.gov)

Tech Staff Info & Use	
Enforcement ID	405563
Violation ID	1005730, 1005731, 1005732, 1005746, 1005747, 1002502, 1002503, 1002504, 1004330, 1005620
WDID	9 000001429
NPDES No.	CA0109223
Order No.	R9-2006-0065, as amended



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## San Diego Regional Water Quality Control Board

April 7, 2016

### NOTICE OF VIOLATION No. R9-2016-0112

Mr. Peter MacLaggan  
Poseidon Resources (Channelside) LLC,  
5780 Fleet Street, Suite 140  
Carlsbad, CA 92008

Carlsbad Desalination Project (CDP)  
4600 Carlsbad Blvd.  
Carlsbad, CA 92008

**Violations of Order No. R9-2006-0065, as amended, Waste Discharge Requirements for the Poseidon Resources (Channelside) LLC, Carlsbad Desalination Project, Discharge to the Pacific Ocean via the Encina Power Station Discharge Channel, NPDES No. CA0109223**

640063:BNNeill

Poseidon Resources (Channelside) LLC (Discharger) is hereby notified that it is in violation of Order No. R9-2006-0065 (as amended), *Waste Discharge Requirements for the Poseidon Resources (Channelside) LLC, Carlsbad Desalination Project Discharge to the Pacific Ocean via the Encina Power Station Discharge Channel*, (Order), NPDES No. CA0109223, and that the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) reserves the right to take any enforcement action authorized by law for the violations described herein.

#### A. Summary of Violations

##### 1. Failure to Comply with Discharge Prohibitions.

- a. **Pursuant to Provision III.B of Order No. R9-2006-0065, as amended:** "The discharge of waste from CDP not in compliance with the effluent limitations specified in Section IV.B of [Order No. R9-2006-0065], and/or to a location other than Discharge Point No. 001, unless specifically regulated by [Order No. R9-2006-0065] or separate waste discharge requirements, is prohibited."

- b. **Observation:** On September 17, 2015 and March 24, 2016, the rinse pit overflowed during start-up operations and discharged to the storm drain system and into Agua Hedionda Lagoon.

## 2. Failure to Comply with Receiving Water Limitations

- a. **Pursuant to Provision V.D.2 of Order No. R9-2006-0065, as amended:** "The discharge of waste shall not cause aesthetically undesirable discoloration of the ocean surface."
- b. **Observation:** On November 13, 2015, the effluent discharge from the CDP caused a discoloration of the Pacific Ocean (the receiving waters) in the vicinity of the outfall.

## 3. Failure to Monitor at Approved Minimum Levels

- a. **Pursuant to Appendix E, Provision IV.C of Order No. R9-2006-0065:** "For each numeric effluent limitation or performance goal for a constituent identified in Table B of the California Ocean Plan, the Discharger shall select one or more Minimum Levels (MLs) and their associated analytical methods from Appendix II of the 2005 Ocean Plan ... MLs chosen by the Discharger must be approved by the Executive Officer."
- b. **Observation:** The 3<sup>rd</sup> Quarter 2015 and 4<sup>th</sup> Quarter 2015 monitoring reports used MLs that did not meet the standards in Appendix II of the 2005 Ocean Plan. Also, the MLs were not approved by the San Diego Water Board Executive Officer. A copy of a letter dated November 3, 2015, approving of MLs from a different laboratory is attached to this NOV for reference.

## 4. Failure to Comply with Effluent Limitations

- a. **Pursuant to Provision IV.B.1 of Order No. R9-2006-0065:** "The discharge of effluent from CDP to Discharge Point No. 001, as monitored at Monitoring Location M-001, shall maintain compliance with the following effluent limitations: Chronic Toxicity<sup>1</sup> maximum daily effluent limitation is 16.5 Chronic Toxicity Units (TUc)."
- b. **Observation:** On December 9, December 23, and December 30, of 2015, and January 15, and February 9 of 2016, chronic toxicity was reported at values exceeding the maximum daily effluent limitation of 16.5 TUc. Further evaluations by Nautilus Environmental<sup>2</sup> "indicated that the majority of effects observed could be attributed to elevated salinity." All monitoring results for salinity at monitoring location M-002 were in

<sup>1</sup> Chronic Toxicity expressed as Chronic Toxicity Units (TUc) = 100/NOEL, where NOEL (No Observed Effect Level) is expressed as the maximum percent effluent or receiving water that causes no observable effect on a test organism, as determined by the result of critical life stage toxicity tests identified in Attachment E, section VI of Order No. R9-2006-0065, as amended.

<sup>2</sup> Nautilus Environmental laboratory report titled "Toxicity Test Results for the Carlsbad Desalination Plant, M-001 Accelerated Chronic Test #3, Sample Collection Date: January 6, 2016". This report was submitted with the Discharger's monthly report for January 2016.

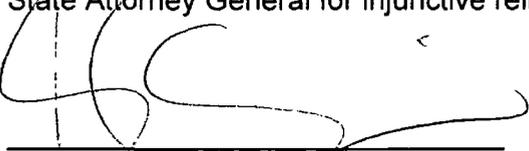
compliance with the average daily effluent limitation of 40 parts per thousand. Pursuant to section VI.C.2.b.4 of Order No. R9-2006-0065, the San Diego Water Board is not recommending, at this time, that the Discharger conduct a Toxicity Reduction Evaluation or a Toxicity Identification Evaluation.

**B. Summary of Potential Enforcement Options**

These violations may subject the Discharger to additional enforcement by the San Diego Water Board or State Water Resources Control Board, including a potential civil liability assessment of up to \$10 per gallon and \$10,000 per day of violation (Water Code section 13385) and/or any of the following enforcement actions:

Other Potential Enforcement Options	Applicable Water Code Section
Technical or Investigative Order	Sections 13267 or 13383
Cleanup and Abatement Order	Section 13304
Cease and Desist Order	Sections 13301-13303
Time Schedule Order	Sections 13300, 13308

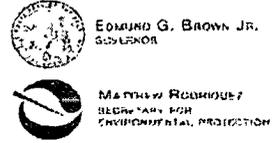
In addition, the San Diego Water Board may consider revising or rescinding applicable waste discharge requirements, if any, referring the matter to other resource agencies, and/or referring the matter to the State Attorney General for injunctive relief.



Brandi Outwin-Beals, P.E.  
Senior Water Resource Control Engineer  
BNO:bin

**Attachment 1: November 3, 2015 letter from the San Diego Water Board**

Tech Staff Info & Use	
Enforcement ID	405563
Violation ID	1005730, 1005731, 1005732, 1005746, 1005747, 1002502, 1002503, 1002504, 1004330, 1005620
WDID	9 000001429
NPDES No.	CA0109223
Order No.	R9-2006-0065, as amended



**San Diego Regional Water Quality Control Board**

November 3, 2015

Mr. Peter MacLaggan, Vice President  
Poseidon Resources (Channelside) LP  
5780 Fleet Street, Suite 140  
Carlsbad, CA 92008  
[PMacLaggan@poseidon1.com](mailto:PMacLaggan@poseidon1.com)

**In reply refer to / attn:**  
640063: bneill

**Subject: Minimum Levels and Analytical Methods, Carlsbad Desalination Project,  
Order No. R9-2006-0065, NPDES No. CA0109223**

Mr. MacLaggan:

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) has completed its review of Poseidon Resources' (Poseidon) proposed minimum levels (MLs) for laboratory analysis, submitted by email, dated October 21, 2015. The MLs require San Diego Water Board approval, under section IV.C of Attachment E to Order No. R9-2006-0065 which provides:

*For each numeric effluent limitation or performance goal for a constituent identified in Table B<sup>1</sup> of the California Ocean Plan, the Discharger shall select one or more Minimum Levels (ML) and their associated analytical methods from Appendix II of the 2005 Ocean Plan [Water Quality Control Plan Ocean Waters of California]. For constituents listed in Appendix II, the Discharger shall submit an appropriate ML (and its associated analytical method) for determining compliance with the effluent limitation (or conformance with the performance goal) for that constituent. All MLs must be approved by the Regional Water Board and/or the State Water Board. The "reported" ML is the ML (and its associated analytical method) chosen by the Discharger for reporting and compliance determination from Appendix II. ML's chosen by the Discharger must be approved by the Executive Officer.*

The San Diego Water Board has evaluated the proposed MLs from Weck laboratories and concluded that they satisfy the requirement in section IV.C of Attachment E to Order No. R9-2006-0065. For questions or comments, please contact Ben Neill by phone at (619) 521-3376, or by email at [Ben.Neill@waterboards.ca.gov](mailto:Ben.Neill@waterboards.ca.gov).

Respectfully,

David W. Gibson  
Executive Officer

<sup>1</sup> In the 2005 Ocean Plan, the minimum levels were in "Table B" within Appendix II. The 2012 Ocean Plan has since renumbered the tables for minimum levels as Tables II-1 through II-4.

DWG:jgs:dtb:bno:bin

cc: David Moxie, IDE America, [David.Moxey@ide-americas.com](mailto:David.Moxey@ide-americas.com)  
MarielaPaz Carpio-Obeso, State Water Board,  
[MarielaPaz.CarpioObeso@waterboards.ca.gov](mailto:MarielaPaz.CarpioObeso@waterboards.ca.gov)

Tech Staff Info & Use	
Order No.	R9-2006-0065
Party ID	522151
WDID	9 000001429
NPDES No.	CA0109223
Reg. Measure ID	308381
Place ID	640063
Person ID	339921