

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

TENTATIVE

ORDER NO. R9-2006-0095
ADMINISTRATIVE ASSESMENT OF CIVIL LIABILITY
AGAINST

THE CITY OF ESCONDIDO
HALE AVENUE RESOURCE RECOVERY FACILITY

FOR VIOLATIONS OF

ORDER NO. 99-72 (NPDES NO. CA0107981);
ORDER NO. R9-2003-0394 (NPDES NO. CA0108944);
CEASE AND DESIST ORDER NO. 96-31 AND
ORDER NO. 93-70

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), having received an offer by the City of Escondido to settle its potential civil liability for violations alleged in Complaint No. R9-2005-0265 (Complaint) dated December 30, 2005, for \$1,152,150 (\$462,150 of which will be waived provided that the City satisfy the conditions of waiver set forth in this Order) instead of the \$1,797,150 recommended in the Complaint, and having provided public notice thereof and not less than thirty (30) days for public comment on the settlement offer, finds that:

1. The City of Escondido (City) owns and operates the Hale Avenue Resource Recovery Facility (HARRF) located at 1521 South Hale Avenue, Escondido, California. The HARRF discharges up to 16.5 million gallons per day (MGD) of secondary treated wastewater to the Pacific Ocean pursuant to waste discharge requirements prescribed in Regional Board Orders Nos. 94-104, 99-72, and R9-2005-0101, NPDES No. CA0107981, *Waste Discharge Requirements for the City of Escondido, Hale Avenue Resource Recovery Facility, Discharge to the Pacific Ocean via the Escondido Land Outfall and the San Elijo Ocean Outfall*.

The City also discharges up to 9 MGD of tertiary treated wastewater from the HARRF to Escondido Creek during extreme wet weather conditions pursuant to waste discharge requirements prescribed in Order No. R9-2003-0394, NPDES No. CA0108944, *Waste Discharge Requirements for the City of Escondido, Hale Avenue Resource Recovery Facility, Intermittent Wet Weather Discharge to Escondido Creek, San Diego County*.

The City discharges up to 9 MGD of reclaimed water to reclamation projects pursuant to waste discharge requirements contained in Order No.

93-70, Waste Discharge Requirements for the City of Escondido, Hale Avenue Regional Reclamation Facility, San Diego County.

2. On June 13, 1996 the Regional Board adopted Cease and Desist Order No. 96-31 against the City of Escondido for flow related violations, or threatened violations, of the waste discharge requirements in Orders Nos.94-104, 99-72, and R9-2005-0101.
3. Between May 3, 2004 and August 17, 2004 the City reported 393 exceedances of effluent limitations contained in Order No. 99-72; if confirmed to be violations, these would be subject to Mandatory Minimum Penalties (MMP) of \$3,000 under subdivisions (h) or (i) of Water Code section 13385 with a maximum civil liability of \$10,000 for each day of violation.
4. The City has asserted that the 393 reported effluent limitation exceedances were caused by an intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight which, in accordance with criteria established in Water Code section 13385(j)(1)(C), would exempt the City from MMP for these violations.

The City has further asserted the 393 reported exceedances were caused by a "single operational upset" (SOU) in accordance with criteria established in Water Code section 13385(f)(1) which would, for the purpose of calculating MMP, collapse the reported exceedances into one violation.

5. During January and February 2005, the City reported 11 exceedances of effluent limitations prescribed in Order No. R9-2003-0394; if confirmed to be violations, these would be subject to MMP of \$3,000 under subdivisions (h) or (i) of Water Code section 13385 with a maximum civil liability of \$10,000 for each day of violation.
6. During January, February, and March 2005 the City reported 47 exceedances of the effluent flow limitation prescribed in Order No. 99-72.
7. The City has asserted that all 47 reported effluent flow limitation exceedances were caused by severe unanticipated rainfall events that were exceptional and could not have been prevented or avoided, which in accordance with criteria established in subdivision (j)(1)(B) of Water Code section 13385, would exempt the City from MMP for these violations.
8. The following alleged violations cited in Complaint No. R9-2005-0265 are not subject to MMP under subdivisions (h) or (i) of California Water Code section 13385. Imposition of civil liability for these alleged violations is discretionary. The City has asserted that it has defenses applicable to the alleged violations or that consideration of statutory factors would justify waiver of discretionary civil liability for these alleged violations:

- a. On January 11 and 12, 2005 the City discharged 280,000 gallons of secondary treated wastewater into Escondido Creek during wet weather in violation of Order No. R9-2003-0394.
 - b. The City discharged 73,500 gallons of secondary treated wastewater into Escondido Creek from the Escondido Land Outfall on February 28, 2005, in violation of Order No. 99-72.
 - c. The City failed to submit 14 semi-annual status reports in violation of Cease and Desist Order No. 96-31. The City also failed to comply with the final compliance date and submit the final compliance report on time in violation of Addendum No. 1 to Cease and Desist Order No. 96-31.
 - d. Between January and October 2005 and the City reported 16 violations of effluent limitations contained in Order No. 93-70.
9. The City of Escondido has initiated studies evaluating the treatment and disposal capacity and project influent flows at the HARRF. Timely implementation of necessary improvements to the HARRF, Escondido Land Outfall or San Elijo Ocean Outfall recommended by the City's consultants upon completion of the studies should eliminate all categories of the alleged violations addressed in this enforcement action.
 10. By accepting the settlement offer tendered by the City of Escondido, involving payment of less than the recommended civil liability without the need for a hearing, the Regional Board will conserve valuable staff resources that would have been allocated to preparation for the hearing and responding to any administrative or judicial review requested by the City.
 11. The reduced amount of liability tendered by the City of Escondido is a sufficient deterrent from future non-compliance, and should act as a deterrent to non-compliance by other dischargers.
 12. A notice was published in the San Diego Union on June 27, 2006, notifying the public of a 30-day review period and soliciting public comments on the terms of the settlement. Some comments expressed concern that the proposed settlement could compromise the Regional Board's authority to enforce NPDES requirements; the findings herein have been adjusted to preserve the Regional Board's discretion to interpret the MMP provisions of subdivisions (h) and (i) of Water Code section 13385 without reference to the applicability or validity of the defenses asserted by City in this case.
 13. The Regional Board incurred a total cost of \$50,000, which includes cost for investigation, preparation of enforcement documents, and

communication with the discharger and interested parties regarding the enforcement action.

14. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) in accordance with section 15321, Chapter 3, Title 14, California Code of Regulations.
15. Consideration of the factors prescribed in California Water Code Section 13385(e) based upon information available to the Regional Board and the settlement offered by the City of Escondido supports the assessment of civil liability in the amount of \$1,152,150. In addition to the factors considered by the Executive Officer in recommending an assessment of civil liability in the amount of \$1,797,150, the Regional Board considered the cost of preparing for and prosecuting a public hearing on the allegations in Complaint No. R9-2005-0265, the possible cost of responding to any request for administrative or judicial review of an order assessing the recommended liability, the activities currently being undertaken by the City to ensure future compliance at the HARRF, the deterrent effect of the reduced liability, and the ability of the Regional Board to recover its staff costs from the amount tendered.

IT IS HEREBY ORDERED that:

1. Civil liability is imposed upon the City of Escondido in the amount of \$1,162,500 pursuant to the settlement offer of the City. Contemporaneous with the Board's approval of this order, the City of Escondido shall pay \$690,000 on September 13, 2006 to the State Water Resources Control Board, for deposit into the Cleanup and Abatement Account.
2. \$462,150 in potential liability shall be suspended and waived, provided that the City submits the final report of the study conducted at the treatment plant entitled "Wastewater Treatment and Disposal Facilities Capacity Study" within three weeks of its completion but no later than December 2006 and the final report of the flow projection study entitled "Flow Project Report" within three weeks of its completion no later than December 29, 2006.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on September 13, 2006.

TENTATIVE
JOHN H. ROBERTUS
Executive Officer