

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

IN THE MATTER OF THE CITY OF OCEANSIDE

COMPLAINT NO. R9-2023-0015 FOR ADMINISTRATIVE CIVIL LIABILITY

**APRIL 2020 SANITARY SEWER OVERFLOWS TO BUENA VISTA CREEK, BUENA
VISTA LAGOON, PILGRIM CREEK, AND WINDMILL CREEK**

The City of Oceanside is hereby given notice that:

1. The City of Oceanside (City) has violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) may impose administrative civil liability pursuant to Water Code section 13385.
2. This Administrative Civil Liability Complaint (Complaint) is issued by the San Diego Water Board Prosecution Team (Prosecution Team) under the authority of Water Code section 13323. References are also made to California state law, where appropriate.

BACKGROUND

3. The City owns and operates its own municipal sanitary sewer system. The City's sanitary sewer system consists of approximately 460 miles of gravity sewer pipeline, 135 miles of force mains, 33 lift stations, and two wastewater treatment plants; the La Salina Wastewater Treatment Plant and the San Luis Rey Water Reclamation Facility (SLRWRF). The SLRWRF treats approximately 9.5 million gallons per day (MGD) of sewage from Oceanside, Vista, Fallbrook and Rainbow Municipal Water District. There are also approximately 200 miles of private sewer laterals which connect to the City's sewer system. Treated wastewater from the SLRWRF is discharged into the Pacific Ocean via the City's Oceanside Ocean Outfall.
4. The Buena Vista Lift Station (BVLS) site is operated by the City and consists of two separate lift stations. The Upper BVLS is the primary station used to handle everyday sewer flows which are pumped to the SLRWRF. The Lower BVLS is used as an emergency overflow station. The BVLS is directly adjacent to Buena Vista Creek and approximately 0.6 miles upstream of Buena Vista Lagoon, a sensitive waterbody with important ecological functions. Buena Vista Creek and Buena Vista Lagoon are waters of the United States (U.S.).
5. The SLRWRF is regulated by San Diego Water Board Order No. R9-2019-0166, NPDES No. CA0107433, as amended by Order Nos. R9-2020-0190 and R9-2021-0199; *Waste Discharge Requirements for the City of Oceanside San Luis Rey Water Reclamation Facility, La Salina Wastewater Treatment Plant, and Mission Basin Groundwater Purification Facility Discharge to the Pacific Ocean Through the Oceanside Ocean Outfall* (Order R9-2019-0166).

6. On April 10, 2020, two high volume sanitary sewer overflows (SSOs) occurred from the City's collection system, and the SLRWRF, due to hydraulic overloading and flooding associated with storm water flows.
 - a. The BVLS flooded due to Buena Vista Creek overtopping its banks, overtopping the berm surrounding the BVLS, and rendering the lift station inoperable. This resulted in 1,121,000 gallons of raw sewage discharging into Buena Vista Creek and Buena Vista Lagoon (Violation 1) as reported in the City's 45-day technical report.
 - b. Hydraulic overloading also overwhelmed the SLRWRF resulting in a discharge of 820,000 gallons of raw sewage from the SLRWRF to Windmill and Pilgrim Creek (Violation 2). Hydraulic overloading occurs when the incoming wastewater flow rate exceeds the system's designed flow rate. When this happens, the system can't treat the wastewater effectively.
7. The SLRWRF consists of two plants, the East Plant (also known as Plant 1) and the West Plant (also known as Plant 2). From the headworks, flow through the SLRWRF is diverted into either Plant 1 or Plant 2. Plant 1 consists of flow equalization, primary sedimentation, biological secondary treatment by means of activated sludge, and secondary sedimentation/clarification. Plant 2 consists of primary sedimentation and biological secondary treatment by means of activated sludge and secondary sedimentation/clarification.
8. In April 2020, SLRWRF Plant 2 was offline and undergoing upgrades related to the Pure Water Oceanside advanced water treatment plant project when the storm event occurred. Daily wet weather capacity for Plant 1 is 10.7 MGD. With both plants online, that capacity would have increased to 15.4 MGD, but Plant 2 was under construction at the time of the storm event. Peak hourly capacity has always been 16 MGD for Plant 1 due to limitations of the Load Equalization Tanks. Since Plant 2 was offline due to construction, 16 MGD was the peak hourly capacity of SLR WRF during the storm event. In the morning hours of April 10, 2020, hourly influent flows exceeded 24 MGD for over an hour and remained above 18 MGD for 8.5 hours.
9. The City's sewage collection system, including the BVLS, is regulated by State Water Resources Control Board Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* (Statewide General Order), and San Diego Water Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region* (Regional General Order).
10. A significant rain event occurred on April 5-10, 2020. During that period, the City received a total of 5.75 inches (as measured at the Oceanside number 27039 weather station); equating to a 50-year, 5-day storm (using the NOAA Atlas 14 Point Precipitation Frequency Estimate tables, available through NOAA's Hydrometeorological Design Studies Center). The City received the majority of that rain (i.e. 3.09 inches) between April 9 and 10, classifying this period as a 25-year, 24-hour storm.

11. Buena Vista Creek is in the Carlsbad Watershed Management Area, Buena Vista Creek hydrologic subarea (904.21). As designated in the Water Quality Control Plan for the San Diego Basin (Basin Plan), Buena Vista Creek supports many beneficial uses, namely agricultural supply (AGR), industrial service supply (IND), rare, threatened, or endangered species habitat (RARE), water contact (REC-1) and non-contact recreation (REC-2), warm freshwater habitat (WARM) and wildlife habitat (WILD). Buena Vista Creek is listed as impaired on the Clean Water Act Section 303(d) list for the following : Benthic Community Effects, Indicator Bacteria, Nitrogen, Phosphorus, Total Dissolved Solids, Toxicity, Selenium, and various Pyrethroid Insecticides (Bifenthrin, Cyfluthrin, Cypermethrin, Permethrin).
12. Pilgrim Creek and Windmill Creek (also known as Windmill Canyon) are located in the San Luis Rey River Watershed, in the Mission Hydrologic Sub Area (903.11). They are both adjacent to the SLRWRF, to the east of the facility. The Basin Plan designates the following beneficial uses for Pilgrim Creek: Contact Water Recreation (REC-1), Non-contact Water Recreation (REC-2), Agricultural Supply (AGR), Industrial Service Supply (IND), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Preservation of Biological Habitats of Special Significance (BIOL), and Rare, and Threatened, and Endangered Species (RARE). The Basin Plan designates the following beneficial uses for Windmill Creek: Contact Water Recreation (REC-1), Non-contact Water Recreation (REC-2), Agricultural Supply (AGR), Industrial Service Supply (IND), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), and Wildlife Habitat (WILD).
13. On August 5, 2020, the San Diego Water Board issued Notice of Violation No. R9-2020-0202 and Investigative Order No. R9-2020-0203 to the City for alleged violations associated with the BVLS SSO and issued Notice of Violation No. R9-2020-0210 and Investigative Order No. R9-2020-0211 for the SSO at the SLRWRF. The Investigative Orders required the City to submit information pertaining to the SSOs no later than September 19, 2020.
14. On September 9, 2020, the City requested a 60-day extension of the due date for the Investigative Order responses. The additional time was requested primarily to expand on the bioassessment analysis conducted by Weston Solutions and to receive a response from the State of California Department of Fish and Wildlife (CDFW) for a Public Records Act (PRA) request made on August 31, 2020. Additionally, the City cited staff availability constraints related to the COVID-19 pandemic that caused some internal delays on compiling the required information. On September 14, 2020, the San Diego Water Board granted an extension to the due date of the Investigative Order responses to November 18, 2020.
15. On November 17, 2020, the City requested an additional 45-day extension for the Investigative Order responses, citing the volume of documents provided by the City of Carlsbad and other public record requests. The San Diego Water Board did not grant the second extension request.

16. On December 24, 2020, the City indicated that as the Investigative Order responses were being finalized a staff member became ill and could not complete the responses. On February 23, 2021 and April 1, 2021 the San Diego Water Board requested status updates on the responses to the Investigative Orders. The City then submitted a Technical Report covering both investigative orders on April 9, 2021, almost one year after the SSOs, and 4 months late from the required submittal date.

RELEVANT REGULATORY REQUIREMENTS

17. **Violation 1:** The City is enrolled in Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* (Statewide General Order), which regulates all entities that own or operate a sanitary sewer system greater than one mile in length that collects or conveys untreated or partially treated wastewater to a publicly owned treatment facility in the State of California. The City is also enrolled in San Diego Water Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Sanitary sewer Agencies in the San Diego Region* (Regional General Order), which also regulates owners and operators of sanitary sewer systems.
18. Prohibition B.1 of the Regional General Order states that “The discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant is prohibited.”
19. Prohibition C.1 of the Statewide General Order states that “[a]ny SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.”
20. Clean Water Act section 301 and California Water Code (Water Code) section 13376, prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System permit.
21. The San Diego Basin Plan Waste Discharge Prohibition No. 1 states “[t]he discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in Water Codes section 13050, is prohibited.”
22. The San Diego Basin Plan Waste Discharge Prohibition No. 9 states “[t]he unauthorized discharge of treated or untreated sewage to waters of the state or to a storm water conveyance system is prohibited.”
23. **Violation 2:** The SLRWRF is regulated under Order No. R9-2019-0166 as amended by Order Nos. R9-2020-0190 and R9-2021-0199 NPDES No. CA0107433, *Waste Discharge Requirements for the City of Oceanside San Luis Rey Water Reclamation Facility, La Salina Wastewater Treatment Plant, and Mission Basin Groundwater Purification Facility Discharge to the Pacific Ocean through the Oceanside Ocean Outfall* (Order No. R9-2019-0166).

24. Discharge Prohibition III.A of Order No. R9-2019-0166 states that “The discharge of waste from the SLRWRF and/or the LSWTP not treated by a secondary treatment process and/or not in compliance with the effluent limitations specified in section IV.A of this Order, and/or to a location other than Discharge Point No. 001, unless specifically regulated by this Order or separate WDRs, is prohibited.
25. Section III.D of Order No. R9-2019-0166 prohibits the discharge of wastewater in violation of *Water Quality Control Plan for the San Diego Basin* (Basin Plan) prohibitions listed in Attachment G of the Order.
26. Section VI.C.4.b-d of Order No. R9-2019-0166 provides operational specifications for the SLRWRF which state:
- b. The Facilities shall be protected against a 100-year storm event as defined by the San Diego County Flood Control District (FCD).
 - c. The Facilities shall be protected against erosion, overland runoff, and other impacts resulting from a 100-year, 24-hour storm event as defined by the San Diego County FCD.
 - d. The Facilities shall be protected against regional impacts due to climate change (e.g., sea level rise and floods).

ALLEGED VIOLATIONS

27. **Violation 1:** The Prosecution Team alleges that the discharge of 1.121 million gallons of untreated sewage from the BVLS to waters of the state and U.S. on April 10-11, 2020, was in violation of Statewide General Order Prohibition C.1, Regional General Order Prohibition B.1, Clean Water Act section 301, Water Code section 13376, Basin Plan Waste Discharge Prohibition No. 1, and Prohibition No. 9.
28. **Violation 2:** The Prosecution Team alleges that the discharge of 820,000 gallons of raw sewage on April 10, 2020 from the SLRWRF, was in violation of Order R9-2019-0166, Discharge Prohibitions III.A and III.D, Clean Water Act section 301 and Water Code section 13376.

ADMINISTRATIVE CIVIL LIABILITY

29. Water Code section 13385, subdivision (a) states, in relevant part:
- (a) A person who violates any of the following shall be liable civilly in accordance with this section:
 - (1) Section 13375 or 13376,
 - (2) A waste discharge requirement issued pursuant to [Chapter 5.5] ...
 - (5) a requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the federal Clean Water Act ... as amended.

30. Water Code section 13385, subdivision (c) states, in relevant part:

Civil Liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 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.
- (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.

31. Each of the violations alleged herein give rise to liability under Water Code section 13385. Violation #1 also gives rise to liability under Water Code section 13350; however, because this Complaint seeks to impose liability pursuant to Water Code section 13385, it does not propose liability pursuant to section 13350.

MAXIMUM LIABILITY

32. The violations described above subject the City to administrative civil liability pursuant to Water Code section 13385(a)(2) and (c), which authorize the San Diego Water Board to impose administrative civil liability up to \$10,000 per violation per day, plus \$10 for each gallon exceeding 1,000 gallons discharged but not cleaned up.

The Maximum Liability Amount that could be assessed for violation 1 is:

$$[1,121,000 \text{ gallons} - 1,000 \text{ gallons}] \times (\$10/\text{gal}) + [(2 \text{ days of violation}) \times (\$10,000/\text{day})] = \$11,220,000$$

The Maximum Liability Amount that could be assessed for violation 2 is:

$$[820,000 \text{ gallons} - 1,000 \text{ gallons}] \times (\$10/\text{gal}) + [(1 \text{ days of violation}) \times (\$10,000/\text{day})] = \$8,200,000$$

Statutory maximum liability for all Violations = \$19,420,000

MINIMUM LIABILITY

33. Water Code section 13385(e) requires that when pursuing civil liability under section 13385, "[a]t a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation." The 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, such that liabilities are not construed as the cost of doing business and provide a meaningful deterrent to future violators.

34. As detailed in the attached Liability Methodology (Attachment A), and based on a calculated economic benefit of \$3,929, from the avoided cost of treating the waste discharged, the minimum liability amount that the San Diego Water Board may assess for the alleged violations is \$4,322.

PROPOSED LIABILITY

35. Pursuant to Water Code section 13385(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 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 the violator's ability to continue in business, any voluntary cleanup efforts undertaken, 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.

36. The Enforcement Policy establishes a penalty calculation methodology for assessing administrative civil liability. Use of the methodology addresses the factors required by Water Code section 13385(e). The required factors have been considered for the violations alleged herein using the penalty calculation methodology in the Enforcement Policy, as explained in detail in Attachment A.

37. Based on consideration of the above facts, the applicable law, and after applying the penalty calculation methodology in Enforcement Policy section VI, the Prosecution Team recommends that the San Diego Water Board impose civil liability against the City in the amount of \$1,807,321 for the violations alleged herein and set forth in full in Attachment A. The recommend penalty amount is between the minimum and maximum amounts as allowed by the Water Code.

KELLY DORSEY, P.G.

Assistant Executive Officer

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

Encl:

Attachment A, Liability Methodology

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