



California Regional Water Quality Control Board San Diego Region



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October 7, 2010

Certified Mail – Return Receipt Requested
Article Number: 7009 1410 0002 2347 5425

Mr. Andrew Fichthorn
Executive Vice President
and General Manager
Sea World, Inc.
500 Sea World Drive
San Diego, California 92109

In reply refer to:
256121:rstewart

NOTICE OF HEARING AND ISSUANCE OF COMPLAINT NO. R9-2010-0138 FOR ADMINISTRATIVE CIVIL LIABILITY WITH MANDATORY MINIMUM PENALTIES AGAINST SEA WORLD, INC. FOR VIOLATIONS OF ORDER NO. R9-2005-0091, NPDES NO. CA0107336

Mr. Fichthorn:

Enclosed find Complaint No. R9-2010-0138 (Complaint) for Administrative Civil Liability with Mandatory Minimum Penalties against Sea World, Inc. for \$6,000 for alleged violations of *Waste Discharge Requirements, Order No. R9-2005-0091, NPDES Permit No. CA0107336*. The alleged violations are described in the Complaint. To further assist you in understanding this administrative process, please find attached the Administrative Civil Liability Complaint Fact Sheet.

Waiver of Hearing

Pursuant to Water Code section 13323, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) will hold a hearing on the Complaint no later than ninety (90) days after it is issued. You may elect to waive your right to a hearing before the San Diego Water Board. Waiver of the hearing constitutes admission of the violations alleged in the Complaint and acceptance of the assessment of civil liability in the amount of \$6,000 as set forth in the Complaint. For the San Diego Water Board to accept the waiver of your right to a public hearing, you must submit the following to the San Diego Water Board by 5 p.m., **November 15, 2010**.

1. The enclosed waiver form signed by an authorized agent of Sea World, Inc.; and
2. A check for the full amount of civil liability of \$6,000 made out to the "State Water Resources Control Board".

California Environmental Protection Agency

Public Hearing

Alternatively, if you elect to proceed to a public hearing, a hearing is tentatively scheduled to be held at the San Diego Water Board meeting on December 8, 2010. The meeting is scheduled to convene at the San Diego Water Board, 9174 Sky Park Court, San Diego, California and the meeting will begin at 9 a.m. At that time, the San Diego Water 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 the draft hearing procedures proposed by the Prosecution Team. The proposed hearing procedures are subject to revision and approval by the San Diego Water Board's Advisory Team. Please note that comments on the proposed procedures are due by **October 18, 2010**, to the San Diego Water Board's advisory attorney, Catherine Hagan at the address indicated in the hearing procedures.

Please contact Rebecca Stewart of my staff at (858) 467-2966 or by e-mail at rstewart@waterboards.ca.gov if you have any questions concerning this matter. The heading portion of this letter includes a San Diego Water Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the San Diego Water Board pertaining to this matter.

Respectfully,



JAMES G. SMITH
Assistant Executive Officer

JGS:jch:rls

- Enclosures
1. Complaint No. R9-2010-0138
 2. Administrative Civil Liability Complaint Fact Sheet
 3. Waiver of Public Hearing Form
 4. Proposed Hearing Procedures

Mr. Andrew Fichthorn
Sea World, Inc.
Complaint No. R9-2010-0138

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October 7, 2010

cc via email (w/enclosures):

David Gibson, San Diego Water Board, dgibson@waterboards.ca.gov

David Barker, San Diego Water Board, dbarker@waterboards.ca.gov

Brian Kelley, San Diego Water Board, bkelly@waterboards.ca.gov

Catherine Hagan, Office of Chief Counsel, chagan@waterboards.ca.gov

Jessica Newman, Office of Chief Counsel, jmnewman@waterboards.ca.gov

cc via U.S. Mail (w/enclosures):

Michael Tucker, Sea World, Inc., 500 Sea World Drive, San Diego, CA 92109

CIWQS Entries	
CIWQS Place ID	256121
CIWQS Enforcement ID	376133
CIWQS Violation IDs	872933, 872934, 872935, 872936, 872680, 872676, 872678, 882161
CIWQS Party ID	523232

California Environmental Protection Agency

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

IN THE MATTER OF:

Sea World, Inc.
SeaWorld, San Diego

*Violations of Waste Discharge
Requirements, Order No. R9-2005-
0091, NPDES Permit No. CA0107336*

Place ID: 256121

**COMPLAINT NO. R9-2010-0138
FOR
ADMINISTRATIVE CIVIL LIABILITY
WITH
MANDATORY MINIMUM PENALTIES**

October 7, 2010

SEAWORLD, INC. IS HEREBY GIVEN NOTICE THAT:

1. Sea World, Inc. is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) must impose civil liability pursuant to section 13385 of the Water Code. The violations alleged herein include violations of effluent limitations in waste discharge requirements for discharges of pollutants from point sources to navigable waters for which the San Diego Water Board is required by statute to impose Mandatory Minimum Penalties (MMPs).
2. Effluent discharged to Mission Bay from SeaWorld, San Diego is subject to the San Diego Water Board's Order No. R9-2005-0091, NPDES Permit No. CA0107336 (Order). The Order prescribes effluent limitations for the discharged of wastewater from exhibit pools, intermittent flows during pool drainage and cleaning operations, runoff from landscape irrigation and facility wash down water to Mission Bay.
3. Water Code section 3385 requires that an MMP of \$3,000 be imposed for each "serious violation" of an effluent limitation. Water Code section (h)(2) defines a "serious violation" as "any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more."
4. Water Code section 13385(i) requires that an MMP of \$3,000 be imposed for each violation of an effluent limitation contained in waste discharge requirements beginning with the fourth violation in any period of six consecutive months.
5. In addition to statutorily mandated MMPs, every violation of an NPDES permit is subject to discretionary liability under Water Code section 13385(a)(2),

including violations not subject to MMPs under Water Code sections 13385 (h) and (i).

6. Ammonia is a group I Pollutant. Ammonia has an instantaneous maximum effluent limitation of 0.55 mg/L pursuant to this Order.
7. The parameter Enterococcus is neither a Group I nor II Pollutant. An effluent limitation has been established for Enterococcus in Order No. R9-2005-0091 such that a violation of the effluent limitation is subject to MMPs under Water Code section 13385(i). The parameter Enterococcus has an instantaneous maximum effluent limitation of 104 MPN/100mL, and a 6-month median effluent limitation of 35 MPN/100mL.
8. The San Diego Water Board hereby expressly reserves the right to, at its sole discretion, withdraw this Complaint for MMPs and reissue a revised Complaint for both MMPs and discretionary administrative civil liabilities arising out of the allegations set forth herein.

ALLEGATIONS

9. Effluent Limitation Violations

On December 24 2007, Sea World, Inc. reported an instantaneous maximum enterococcus effluent sampling result of 500 MPN/100mL for November 18, 2007. This was the fourth reported violation of an effluent limitation in a six month period. Attachment No. 1, *Reported Violations*, details the violations.

10. On December 22, 2008, Sea World, Inc. reported an instantaneous maximum ammonia effluent sampling result of 1.7 mg/L for November 18, 2008. This is a "serious violation" because the sampling result exceeded the effluent limitation by 40 percent or more.

11. Pursuant to Water Code section 13385, the San Diego Water Board must impose mandatory minimum penalties in the amount of six thousand dollars (\$6,000) on Sea World, Inc.

Dated this 7th day of October 2010.



JAMES G. SMITH
Assistant Executive Officer

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

Attachment 1: *Reported Violations*

Attachment 1, Reported Violations

MMP ACL Complaint No. R9-2010-0138

Violation Date	Violation ID	Constituent	Effluent Limitation	Unit	Permitted Limit	Reported Value	Mandatory Minimum Penalty ¹²	Notes
06/20/2007	872933	Enterococcus	Average Monthly	MPN/100mL	35	47.6	\$0	1 st violation in 6-month period
06/20/2007	872934	Enterococcus	Instantaneous Maximum	MPN/100mL	104	230	\$0	2 nd violation in 6-month period
11/28/2007	872935	Enterococcus	Average Monthly	MPN/100mL	35	130.3	\$0	3 rd violation in 6-month period
11/28/2007	872936	Enterococcus	Instantaneous Maximum	MPN/100mL	104	500	\$3,000	4 th or greater violation in 6-month period
07/17/2008	872680	Total Coliform	>10% in 30 Days	MPN/100mL	230	300	\$0	1 st violation in 6-month period
09/26/2008	872676	Enterococcus	Average Monthly	MPN/100mL	35	201.5	\$0	2 nd violation in 6-month period
09/26/2008	872678	Enterococcus	Instantaneous Maximum	MPN/100mL	104	800	\$0	3 rd violation in 6-month period
11/18/2008	882161	Ammonia	Instantaneous Maximum	mg/L	0.55	1.7	\$3,000	Serious Violation 323% over effluent limitation
Total MMP							\$6,000	

¹ Water Code section 13385(h) requires the assessment of a \$3,000 MMP for each serious violation. A serious violation is an exceedance of a Group I Pollutant effluent limitation by 40 percent or more. Ammonia is a Group I Pollutant.

² Water Code section 13385(i) requires the assessment of a \$3,000 MMP for the fourth violation and each subsequent violation of an effluent limitation in any six month period