

discharge into Lower Newport Bay. The discharge originated from the Hoag Hospital located at One Hoag Drive in Newport Beach. Veolia, who was retained by Hoag Hospital, was conducting maintenance services at Hoag Hospital on a hydrogen sulfide scrubber. Some of the wastes from the maintenance operations drained into a location within the Hoag Hospital facility that has an automated sump pump that discharges to a storm drain system and into Lower Newport Bay when it is actuated.

5. Hoag Hospital has two hydrogen sulfide scrubbers that are used to remove hydrogen sulfide from methane gas that is used in the co-generation plant. The scrubber vessels contain SulfaTreat, a granular reactant media, containing metal oxide catalytic converters. In the scrubbers, hydrogen sulfide is converted to elemental sulfur and water in the presence of the catalyst. The scrubbers have to be serviced and the spent material has to be removed from the scrubbers approximately every 18 months. For the last ten years, Hoag Hospital has employed Veolia to service these scrubbers. In prior years, the wastewater generated during the servicing operation was discharged to the sanitary sewer and the spent media was analyzed and disposed of at proper disposal locations. With the exception of 2009 and 2010, the spent media has been determined to be non-hazardous and disposed of at a local landfill. In 2009 and 2010, the spent media was disposed of as hazardous material at the Kettleman Landfill due to its chromium content.
6. During the scrubber service, the spent material, including any liquid wastes, from the scrubbers is removed into a roll-off box lined with a filter fabric. Any liquid from this roll-off box drains to the concrete floor and is collected in a storm water sump. Hoag Hospital has installed a sump-pump in the storm water sump that turns on automatically once a certain amount of water collects in the sump and pumps the collected storm water to a storm drain system that discharges to Lower Newport Bay. To avoid any unauthorized discharges into the Bay during the scrubber service, this storm water sump-pump must be removed, disabled or the flow otherwise diverted. In the past, during the scrubber servicing operations, a diaphragm-pump had been used to pump the wastes collected in the storm water sump to an onsite sanitary sewer. During the scrubber service in question, however, the sump-pump was left in place and in service with the hose set to discharge to the storm drain system.
7. The scrubber servicing started on May 26, 2010 and ended on June 2, 2010. As a last step in the process, the bottom drain of the scrubber vessel was opened to drain approximately 1,350 gallons of wash water and residual media. This discharge was collected in the storm water sump. From this sump, the wastes were simultaneously pumped by the sump-pump and the diaphragm-pump to the storm drain system and the sanitary sewer, respectively. The wastes pumped to the storm drain system were discharged to Newport Bay.
8. On June 2, 2010, an orange-colored substance was reported in Newport Bay near 4 Balboa Coves around 14:32 hours. Further investigations by various responding

agencies indicated that the discharge was coming through a forty-inch storm drain near 8 Balboa Coves. A significant quantity of the spent scrubber media was visible inside the storm drain at the outlet to Lower Newport Bay. A sample of the discharge was collected. Preliminary field screening of the sample indicated that the sample contained glutaric dialdehyde. Glutaric dialdehyde is used as a disinfectant for medical equipment. The material safety data sheet (MSDS) for this material indicates that glutaric dialdehyde is highly toxic. Since glutaric dialdehyde was not used in the scrubbers or during servicing of the scrubber, its source appears to be from the hospital operations. However, this constituent was not detected in the laboratory analysis of the sample. The laboratory analysis detected iron oxide, which is a major component of SufaTreat.

9. The discharge to Lower Newport Bay on June 2, 2010 appeared to be mostly wastes generated during the servicing of the scrubber, including spent scrubber media. The orange-colored plume, including scum, extended approximately 0.58 miles in Lower Newport Bay in front of 8-20 Balboa Coves. Under directives from the regulatory agencies, Veolia attempted to cleanup the affected area. An absorbent boom was deployed to sweep the plume and then a vactor truck was used to pump this water into the truck. Any visible contamination on the beach sand and solids from the storm drains were also cleaned up.
10. On June 2 and 3, 2010, a number of agencies responded to the spill incident including: (1) Newport Beach City Code Enforcement/ Water Quality and Conservation; (2) Newport Beach Police, Harbor Patrol and Fire Departments; (3) Orange County Health Care Agency; (4) Huntington Beach Haz-Mat (mutual aid); (5) State Department of Fish and Game; (6) Regional Board staff; and (7) US Coast Guard.
11. The discharge of wastes from the scrubber servicing operations created a nuisance and potentially impacted the beneficial uses of the waters in Newport Bay. The designated beneficial uses of Lower Newport Bay include: (1) Navigation; (2) Water contact recreation; (3) Non-contact water recreation; (4) Commercial and sportfishing; (5) Rare threatened or endangered species; (6) Spawning; (7) Marine habitat; (8) Wildlife habitat; and (9) Shell fish harvesting.
12. Neither Veolia nor Hoag Hospital has authorization to discharge wastes to the storm drain systems or to waters of the U.S. Unauthorized discharges of wastes from Hoag Hospital by Hoag Hospital or its service providers are a violation of the California Water Code Section 13376, 13385 and Clean Water Act section 301.
13. The Dischargers are alleged to have violated CWC Section 13385(a)(1) by discharging pollutants to waters of the U. S. in violation of California Water Code Section 13376.
14. Pursuant to CWC Section 13385(c), the Regional Board can administratively assess civil liability in an amount not to exceed the sum of the following:

- A. Ten thousand dollars (\$10,000) for each day in which the violation occurs; and,
 - B. Where there is a discharge, any portion of which is not susceptible to clean up 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.
15. CWC Section 13385(c) states that civil liability on a per day basis may not exceed \$10,000 for each day the violation occurs. The maximum liability for the violation cited above is \$10,000 based on a one day violation (June 2, 2010, at \$10,000 per day). Since the volume of the discharge was estimated to be less than 1,000 gallons, a per gallon assessment is not included.
16. CWC Section 13385(e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. The Water Quality Enforcement Policy (the Policy) adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil liability pursuant to this statute. Use of methodology addresses the factors in CWC section 13385(e). The policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf
17. This discharge was caused by negligence on the part of the Dischargers and both Dischargers are responsible parties. Regional Board staff investigations of the spill incident indicated that there was no written agreement between Veolia and Hoag Hospital regarding individual responsibilities during the scrubber servicing operations for disabling the sump pump which caused the discharge. Hoag Hospital hired Veolia to conduct the scrubber servicing operations and as the employer of Veolia had the ability to control how those services were conducted. Furthermore, Hoag Hospital is the owner of the facilities from which the discharge originated, including the automated sump pump set to discharge to the storm drain system. Hoag Hospital knew the existence of the sump pump and did not remove it from the sump. At the same time, the scrubber servicing operations conducted by Veolia generated the wastes. Veolia installed the diaphragm pump in the storm water sump. Staff investigations indicated that at the time the diaphragm pump was installed, the sump pump was already in the sump and was clearly visible. Veolia neither removed the sump pump nor requested Hoag Hospital to remove it. Neither Veolia nor Hoag Hospital exercised due diligence to ensure proper disposal of wastes generated during the scrubber servicing operations. Accordingly, both Veolia and Hoag Hospital are responsible parties.
18. After consideration of the factors in accordance with the CWC statutes and the Policy, the Division Chief proposes that civil liability be imposed on the Dischargers

in the amount of ten thousand dollars (**\$10,000**) for the violations cited above. Attachment A presents the administrative civil liability derived from the use of the penalty methodology in the Policy. In summary, this amount is based on the following:

- A. The maximum statutory per day penalty for one day's violation is \$10,000. The Policy requires a consideration of the potential for harm from the discharge. Based on a potential harm factor of 0.150, the per day penalty is \$1,500 (1 dayX\$10,000/dayX0.150=\$1,500).
- B. This amount is then adjusted based on Veolia and Hoag Hospital's culpability (1.5), cleanup effort and cooperation (1.0), and history of violations (1.0). The adjusted penalty is \$1,500X1.5X1.0X1.0=\$2,250.
- C. California Water Code Section 13385(e) also requires consideration for economic benefit or savings, if any, resulting from the violations and other matters as justice may require. Regional Board staff has determined that the Dischargers did not realize any significant savings from its failure to remove the sump-pump from the storm water sump.
- D. The costs of investigation and enforcement are considered as one of the "other factors as justice may require," and should be added to the final liability. Investigation costs have been estimated to be \$9,000 (60 hours at \$150 per hour=\$9,000). Staff costs should be added to the assessed amount. The total penalty with the staff costs is \$11,250 (\$9,000+\$2,250=\$11,250). The Division Chief proposes to assess Veolia the statutory maximum of **\$10,000**.

19. The Dischargers are jointly and severally liable for the alleged violation. No attempt has been made to apportion liability between the parties.

WAIVER OF HEARING

The Dischargers may waive their right to a hearing. If the Dischargers choose to do so, please sign the attached Waiver Form and return it, together with a check for **\$10,000** payable to the State Water Pollution Cleanup and Abatement Account, in the enclosed preprinted envelope. If the Dischargers waive their right to a hearing and pay the assessed amount, the Regional Board may not hold a hearing regarding this complaint.

If you have any questions, please contact Stephen D. Mayville at (951) 782-4992.

12/14/10
Date



Michael J. Adackapala
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Regional Board Prosecution Team