



grease are a major cause of sewer system overflows. In addition, fats, oils, and grease add significant costs to maintenance of sewer systems and to treatment of sewage. IRWD has established a fats, oils and grease (FOG) program that provides public education, conducts facility inspections and enforces the FOG program. IRWD has inspected restaurants since September 2005. These inspections included the El Pollo Loco facility in Irvine. IRWD provided the restaurant management training on the FOG program. Since that training, management has changed several times for this restaurant. IRWD encourages cooperate management participation in the FOG training program for chain restaurants, such as El Pollo Loco. There is no indication that El Pollo Loco's corporate offices participated in the FOG training program.

7. On January 26, 2010, an estimated 500 gallons of raw sewage were spilled from the El Pollo Loco facility. The release was from a grease interceptor clean-out located on the Jamboree Boulevard side of the restaurant within the drive-through lane. The spill was caused by a blockage in the sewer lateral. The spilled material contained raw sewage, including grease, and was observed in the drive-through lane and the marinating section of the kitchen. The spill was initially reported to the Irvine Police Department by a private citizen. Initial investigations of the incident were conducted by the Irvine Police Department, City of Irvine's Code Enforcement and Orange County Health Care Agency. Further investigations were conducted by Regional Board staff. The following findings are based on these investigations.
  - a. At approximately 10:00 a.m. on January 26, 2010, El Pollo Loco's corporate office called its contract plumber about a sewage spill at the Irvine El Pollo Loco restaurant. The plumber arrived at the restaurant at approximately 10:15 a.m. and his initial attempts to clear the blockage from the kitchen sink were not successful. So he requested the restaurant's shift supervisor to close the drive-through lane to enable him to work on clearing the blockage. They started to close down the drive-through lane as the shift supervisor contacted the corporate office for its approval. El Pollo Loco's corporate office denied permission to close down the drive-through lane during the lunch time rush. El Pollo Loco's corporate office sent the plumber back with a request to return after the lunch time rush.
  - b. The plumber returned at approximately 3:00 p.m. and cleared the blockage. In the meantime, the spill continued for approximately five hours and was seen entering a nearby City of Irvine's storm drain system. The City's storm drain system is tributary to Peters Canyon Wash, San Diego Creek and Newport Bay. These are considered as waters of the U.S. for which the Basin Plan<sup>1</sup> has designated beneficial uses. The discharge of raw sewage can impact the designated beneficial uses of these receiving waters. The beneficial uses of San Diego Creek and Newport Bay include water contact recreation and non-contact water recreation.

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<sup>1</sup> Santa Ana Region Basin Plan, see at:

[http://www.waterboards.ca.gov/santaana/water\\_issues/programs/basin\\_plan/index.shtml](http://www.waterboards.ca.gov/santaana/water_issues/programs/basin_plan/index.shtml)

- c. The police report indicated that a brown solid matter that was observed in the spilled sewage on the drive-through lane was tracked by the automobiles to the exit of the drive-through and the handicap pedestrian access area. A foul smell of sewage was observed outside of the restaurant.
  - d. None of the spilled sewage was recovered and returned to the sanitary sewer system. This resulted in an estimated volume of 500 gallons of sewage being discharged into a storm drain leading to San Diego Creek, a water of the United States.
8. Since the January 26, 2010 incident, IRWD has required the restaurant to prepare a sewer spill/overflow response plan in a letter dated February 24, 2010. Because of historic non-compliance, IRWD has required more frequent grease interceptor servicing as well as semi-annual private sewer lateral cleaning and inspections to prevent blockages and potential sewer system overflows. Regional Board investigators believe that at the time of this incident on January 26, 2010, the grease interceptor was overdue servicing.
9. The discharge caused a public nuisance, a public health threat and threatened to impact or impacted the beneficial uses of waters of the U.S. The El Pollo Loco corporate officer's decision not to close the drive-through lane to address the sewage spill prolonged the spill and caused environmental harm to the public and water quality. The spill was a result of a failure of El Pollo Loco to adequately maintain its sanitary sewer system. The quantity of sewage spilled could have been minimized if the El Pollo Loco corporate officer had acted diligently. It appears that the corporate officer's actions were motivated by profit considerations rather than any consideration for environmental protection.
10. CWC Section 13376 states, "Any person discharging pollutants or proposing to discharge pollutants to navigable waters of the United States within the jurisdiction of this state ... shall file a report of the discharge in compliance with the procedures set forth in Section 13260." The above discharges were in violation of this provision of the CWC.
11. Chapter 5, Section B.1., of the Basin Plan prohibits the discharge of untreated sewage to any surface water stream, natural or man-made, or to any drainage system intended to convey storm water run-off to surface water streams. El Pollo Loco is alleged to have violated this Basin Plan prohibition.
12. Pursuant to CWC §13385 (c)(1), the Regional Board may impose civil liability administratively on a daily basis; and on a per gallon basis for discharge in excess of 1,000 gallons [CWC §13385 (c) (2)]. The Division Chief proposes to impose civil liability per CWC §13385 (c) (1) since the discharge was less than 1,000 gallons.

13. CWC §13385(c)(1) states that administrative civil liability may not exceed \$10,000 per day. For the discharge incident described above, the maximum liability for the violation cited above is \$10,000 for discharges that occurred on January 26, 2010.
14. CWC §13385 (e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. Consideration of these factors is addressed in the following table.

Factor	Comment
<b>A. Nature, Circumstances, Extent and Gravity of Violation</b>	<p>An estimated 500 gallons of untreated wastewater (sewage) was discharged from El Pollo Loco's sanitary sewer system to a storm drain inlet tributary to San Diego Creek.</p> <p>The sewage discharged to surface waters has the potential to impact the designated beneficial uses by the introduction of bacteria, nutrients, and other pollutants. The spilled sewage was observed in the marinating area of the kitchen, the handicap access ramp, and the drive-through lane. This discharge was a not only a public nuisance, but also a threat to public health.</p> <p>El Pollo Loco's corporate officer's reluctance to allow the plumber, who was already onsite, to close the drive-through lane to clear the sewer blockage exacerbated the problem. El Pollo Loco neither contained the spilled sewage nor tried to address the leak in a timely manner.</p>
<b>B. Culpability</b>	<p>The release of raw sewage within the kitchen area as well as outside the facility where the public had access and were exposed to the raw sewage constitutes extreme negligence on the part of the El Pollo Loco corporate officer. He, in fact, stalled the repair and clean-up process for almost 5 hours.</p>
<b>C. Economic Benefit or Savings</b>	<p>El Pollo Loco's decision to not act on containing and cleaning up the sewage release allowed the facility to remain open during the peak lunch time and the facility collected approximately \$1,000 in revenue during this time. If the facility had closed the drive-through lane to address this problem during the lunch time rush, most of the drive-through customers probably would have gone inside the restaurant. So the facility probably did not have a significant economic benefit either by not closing the drive-through lane during lunch time rush or by delaying the repair work itself.</p>

<b>D. Prior History of Violations</b>	IRWD has indicated that the facility had a history of violations. However, Regional Board staff was not aware of any prior history of releases or failure to maintain its systems, other than the discovery during this investigation.
<b>E. Staff Costs</b>	Regional Board staff spent approximately 30 hours investigating this incident. The total cost for staff time is \$4,500 (30 hrsX\$150/hr=\$4,500).
<b>F. Ability to pay</b>	Regional Board staff has no information that demonstrates that El Pollo Loco would have any difficulty in paying the assessed amount.

15. The Water Quality Enforcement Policy (hereinafter "the Policy") adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil liability pursuant CWC §13385(e). Use of this methodology addresses the factors in CWC § 13385(e). The Policy can be found at: [http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf)
16. The Policy requires consideration of the potential for harm from the discharge of untreated sewage. The potential for harm from the discharge=3 (moderate, see Page 12 of the Policy), the characteristics of the discharge=3 (discharged material poses an above-moderate risk or threat to potential receptors, see Page 13 of the Policy) and the susceptibility to cleanup or abatement is =0 (50% or more of the discharge was susceptible to cleanup or abatement); the total potential for harm=6 (3+3+0=6). Using Table 2, on Page 15, the "per day factor" for the discharge is=0.220, considering this as a "major" deviation from requirement and 6 as the potential for harm. This factor is then used to calculate the per day assessment for the discharge violation ( $\$10,000 \times 0.220 = \$2,200$ ).
17. In addition, the Regional Board should consider the violator's conduct factors (see Table 4 on Page 17 of the Policy). The amount calculated above is then adjusted based on El Pollo Loco's culpability (a culpability of 1.5 is assigned based on El Pollo Loco's negligence and intentional delay in addressing the problem), cleanup and cooperation (a factor of 1.5 is also assigned to cleanup and cooperation) and history of violations (1.0 based on "no prior history of violations"). The adjusted amount based on these factors is= $\$2,200 \times 1.5 \times 1.5 \times 1.0 = \$4,950$ .
18. CWC §13385 also requires consideration of economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. Regional Board staff believes that El Pollo Loco did not have a significant economic benefit as discussed in the table above. The costs of investigation and enforcement are considered as one of the "other factors as justice may require". Staff costs are \$4,500 (see table above).

19. After consideration of the above factors, the Division Chief proposed that a civil liability be imposed administratively on El Pollo Loco in the amount of \$9,450.00 for the violations cited above (\$4,950 penalty+\$4,500 in staff costs).
20. On June 22, 2011, El Pollo Loco paid the proposed liability and waived its right to a hearing.
21. This Complaint will be posted on the Regional Board's website for 30-days for public comments. If no significant comments are received, this matter will be considered as settled at the end of the 30-day comment period. If there are unresolved significant comments, this matter will be scheduled for a public hearing at a regularly scheduled Board meeting at a later date. If a public hearing is to be held, all interested parties will be notified of the public hearing.

If you have any questions, please contact Stephen D. Mayville at (951) 782-4992 or Chuck Griffin at (951) 782-4996.

8/8/2011  
Date

  
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