

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION
3737 Main Street, Suite 500
Riverside, California 92501**

ORDER NO. R8-2015-0037

**ADMINISTRATIVE CIVIL LIABILITY ORDER
IN THE MATTER OF
COSTA MESA SANITARY DISTRICT
ORANGE COUNTY**

The California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board), having held a public hearing on July 24, 2015 and having considered all the evidence, public comments, and stipulations by the designated parties, hereby adopt this Administrative Civil Liability Order (“Order”) based on the following findings:

COSTA MESA SANITARY DISTRICT

1. The Costa Mesa Sanitary District (hereinafter “CMSD” or “Discharger”) provides sanitary sewer service and municipal trash collection service to residents and businesses in and around the City of Costa Mesa and portions of the City of Newport Beach. The sewage collection system consists of approximately 219 miles of gravity sewer pipeline, 20 sewage lift stations, and 5 miles of sewage force main pipeline. The Discharger serves approximately 116,000 residents within its service area.
2. The Irvine Sewage Lift Station, located in the vicinity of Irvine Avenue and Mesa Drive in the County of Orange, is one of the 20 lift stations the Discharger owns, operates and is responsible for its maintenance.
3. A portion of the sewage collection system operated by the Discharger is known as the Indus Line. It runs parallel to the Santa Ana Delhi Flood Control Channel as the channel winds its way through a residential neighborhood between Santa Ana Avenue and Irvine Avenue in Newport Beach.

REGULATORY AND LEGAL AUTHORITY

4. The Discharger is required to operate and maintain its sewage collection system to prevent sewer overflows and spills in compliance with the requirements of the Statewide General Waste Discharge Requirements For Sanitary Sewer Systems, Order No. 2006-0003-DWQ (SSS Order). The SSS Order explicitly prohibits any wastes from being discharged to waters of the United States. The Discharger obtained coverage under the SSS Order on

October 30, 2006 and was enrolled under the SSS Order at the time the SSOs occurred.

5. The Discharger is required to operate and maintain its sewage collection system to prevent sewer overflows and spills in compliance with the requirements of the SSS Order.
6. The SSS Order states: "SSOs often contain high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oxygen demanding organic compounds, oils and grease and other pollutants. SSOs may cause a public nuisance, particularly when raw untreated wastewater is discharged to areas with high public exposure, such as streets or surface waters used for drinking, fishing, or body contact recreation. SSOs may pollute surface or ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters."
7. Provision D.1 of the SSS Order states, "The Enrollee must comply with all conditions of the SSS Order. Any noncompliance with the SSS Order constitutes a violation of the California Water Code and is grounds for enforcement action."
8. Prohibitions C.1 and C.2 of the SSS Order state, "any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States..." and "any SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance... is prohibited."
9. Provision D.8 of the SSS Order states, "The Enrollee shall properly, manage, operate, and maintain all parts of the sanitary sewer system owned and operated by the Enrollee, and shall ensure that the system operators (including employees, contractors, or other agents) are adequately trained and possess adequate knowledge, skills, and abilities."
10. California Water Code section 13243 provides that the Regional Board may specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted. The Regional Board implements this section of the CWC by adopting and implementing the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan). The Basin Plan establishes the beneficial uses (Chapter 3) and water quality objectives (Chapter 4) for the ground and surface waters for the Santa Ana Region, which must be met and maintained to protect those uses.
11. The Basin Plan specifies a plan of implementation to ensure water quality objectives are met and beneficial uses are protected. The Basin Plan Implementation Plan (Chapter 5) prohibits the discharge of untreated sewage to any surface water, natural or manmade, or to any drainage system intended to convey storm water runoff to surface waters.

12. The Federal Clean Water Act (33 U.S.C §1311) prohibits the discharge of pollutants from a point source to waters of the United States, unless authorized by a National Pollutant Discharge Elimination System (NPDES) Permit.
13. California Water Code section 13385 provides, in part, that any person who violates waste discharge requirements shall be liable civilly. In addition, this section includes provisions for assessing administrative civil liability for discharges of wastes to surface waters in violation of the federal Clean Water Act. The discharge incidents described above were to surface waters of the United States.

VIOLATIONS OF CALIFORNIA WATER CODE SECTION 13385

Irvine Sewage Lift Station SSO

14. At an undetermined time during the early morning hours of August 31, 2013 (a Saturday), the pumps of the Irvine Sewage Lift Station (hereinafter "Lift Station") failed to start and sewage began to back up in the tributary collection system. Eventually sewage overflowed from the collection system and flowed into Anniversary Lane, a residential street in the City of Newport Beach, and then discharged into the Santa Ana Delhi Channel (located directly adjacent to Anniversary Lane).
15. The Santa Ana Delhi Channel, operated by Orange County Public Works, conveys stormwater and non-stormwater runoff into the Upper Newport Bay (a water of the United States). From the point where the sewage discharged into the Santa Ana Delhi Channel, the sewage traveled for approximately 150 yards before entering the Upper Newport Bay. This reach of the Santa Ana Delhi Channel experiences the ebb and flow of tidal action within the Bay (i.e. it is within the tidal prism).
16. During the morning of August 31, 2013, when sewage was discharged from the CMSD collection system, the tide was ebbing and reached its lowest point at approximately 12:05 P.M. that afternoon. Thus, sewage was being conveyed into Upper Newport Bay throughout the time it was discharging to the Santa Ana Delhi Channel.
17. A few minutes prior to 10:35 A.M., City of Newport Beach staff were first to respond to a resident's complaint of the overflowing sewage condition. Newport Beach city staff confirmed that it was the Discharger's sewage collection system that was overflowing, even though the residents served by the Discharger's system reside within the City of Newport Beach. City staff observed that the overflowing sewage was discharging to the Santa Ana Delhi

Channel. Newport Beach city staff notified the Discharger of the overflowing condition at approximately 10:35 A.M.

18. Prior to the notification from Newport Beach city staff of the overflow situation, the Discharger was unaware of any problem with the operation of the Irvine Sewage Lift Station. The lift station is equipped with a monitoring system that should have provided notification to the Discharger's staff of its failure to operate and of the high wet-well condition. Unfortunately, the monitoring system failed to provide any notification.
19. Responding staff employed by the Discharger were inadequately trained to accurately diagnose the reason for the lift station's failure to operate. With assistance from the Newport Beach city sewer collection system maintenance staff, the Irvine Sewage Lift Station was restored to operation at approximately 12:00 (Noon). Newport Beach city staff were able to assess the problem with the lift station and recommend corrective action to get the lift station back into operation. The overflow condition ceased once the Lift Station resumed operation. It was estimated by the Discharger that seventy nine thousand (79,000) gallons of sewage overflowed from the collection system. Newport Beach city staff assisted in the recovery of two thousand (2,000) gallons of sewage using their vacuum truck. Thus, a total of seventy seven thousand (77,000) gallons of sewage was discharged into the Santa Ana Delhi Channel and Upper Newport Bay.
20. The Discharger's efforts to restart the lift station were encumbered due to a lack of training of its collections system maintenance staff to diagnose the operational problem with the lift station. The Discharger estimated that delays in restarting the lift station due to a lack of training resulted in an additional 8,000 gallons of sewage discharged.
21. The Discharger attempted to recover some of the sewage that had been discharged to the Santa Ana Delhi Channel by containing urban runoff and pumping it from the channel. This pumping began at approximately 7:00 P.M. on August 31, several hours after the sewage discharge to the Santa Ana Delhi Channel had ceased. Considering that the tide was ebbing from the early morning hours until 12:00 (Noon) when the discharge ceased, it was likely that all the sewage had been conveyed into Upper Newport Bay, and, therefore, was unrecoverable.
22. As a result of the sewage discharged to Upper Newport Bay, Orange County Health Care Agency (hereinafter "OCHCA") closed beaches fronting Newport Dunes Waterfront Resort and Marina and Newport Aquatic Center from Saturday, August 31st until September 3rd. Human contact with the waters of Upper Newport Bay was prohibited.

Indus Line SSO

23. On January 1, 2015 (a Thursday) at approximately 11:45 AM, the City of Newport Beach Police Department was notified of a sanitary sewer overflow in progress from a sewer manhole within the Fairway Villas apartment complex located at 20122 Santa Ana Avenue, Newport Beach. The Police dispatch, in turn, notified the City's on-call Public Works staff person, Chris Newton. Since Mr. Newton was familiar with the area of the reported SSO, and he knew that it was within the service boundary of the Discharger, he immediately notified C&R Drains, the after-hours emergency response service for the Discharger.
24. Initial response to the scene was from the City of Newport Beach staff followed by the Discharger's staff at 1:00 PM. The overflowing sewer manhole was located in a driveway at the north end of the apartment complex's garage and resident parking area. Sewage from the overflowing manhole was observed flowing into a storm drain inlet (within 20 feet of the manhole) that discharges storm water runoff directly into the adjacent Santa Ana Delhi Channel.
25. The Discharger's staff did not respond with any equipment to locate the source of a blockage that was the cause of the overflowing sewer manhole. Despite being contacted directly by Newport Beach city staff, C&R Drains staff, who were expected to bring appropriate equipment for this task, failed to respond to the incident scene during the entire incident response.
26. At 1:35 PM on the same day, the City of Newport Beach was requested by the Discharger to mobilize the City's sewer cleaning equipment to the scene in order to locate the source of the blockage and clear the sewer main. At 2:15 PM, additional Newport Beach city staff, along with their sewer cleaning apparatus, arrived at the scene. By 2:40 PM, the blockage had been located and cleared, and normal flow conditions in the sewer main resumed. The blockage was caused by root intrusion into the sewer main.
27. During this overflow event on January 1, 2015, it was estimated that 8,100 gallons of sewage had been discharged to the Santa Ana Delhi Channel without any being recovered. The Santa Ana Delhi Channel discharges into Upper Newport Bay, which is a water of the United States. Orange County Health Care Agency closed beaches serving the Newport Aquatic Center and the Newport Dunes Waterfront Resort and Marina from 3:50 PM on January 1 until 10:45 AM on January 4, 2015.
28. The sewer manhole that overflowed is a component of the Discharger's collection system known as the "Indus Line." The Indus Line has been identified by the Discharger, since December, 2007 as a reach of sewer needing more frequent cleaning due, in part, to the identification of portions of the line having mis-aligned joints. The sewer traverses beneath private residents' backyards where semi-permanent structures such as block-wall

fences and outbuildings have been built, although the Discharger has a 35 ft. utility easement. The sewer main is approximately 1,200 feet in length and has ten manholes located along its length. Access to eight of ten manholes on the Indus Line is limited and no vehicle access is possible.

29. The Santa Ana Delhi Channel, at the point where the sewage discharged into the channel, has vertical concrete walls and is 15 to 20 feet in depth. Therefore, because of the difficulty of access into the channel, an effective containment effort to control sewage being discharged to the channel was not feasible. A cleanup contractor was retained by Orange County Public Works to clean the affected apartment driveway, storm drain and Santa Ana Delhi Channel concrete surfaces.

Impacts to Beneficial Uses

30. The designated beneficial uses of the Upper Newport Bay are as follows:
- (1) water contact recreation; (2) non-contact water recreation; (3) commercial and sport fishing; (4) wildlife habitat; (5) preservation of biological habitats of special significance; (6) rare, threatened or endangered species; (7) spawning, reproduction and development waters supporting high quality aquatic habitats; (8) marine habitat; (9) shellfish harvesting; and (10) estuarine habitat.
31. One observable impact to the recreational beneficial use of Upper Newport Bay from both SSO incidents was the closure of beaches. As noted above, a result of the discharge of sewage to the Bay on August 31, 2013 and January 1, 2015, was Orange County Health Care Agency closing beach access for human contact recreation at the Newport Dunes Waterfront Resort and Marina and the Newport Aquatic Center. The closure that started mid-afternoon of Saturday, August 31, 2013 lasted until mid-morning of September 3, 2013 (virtually the entire Labor Day weekend). The same beaches and businesses were again impacted from January 1, 2015 until January 4, 2015.
32. Although no evidence was presented that indicated any significant impacts to beneficial uses besides water contact and non-contact water recreation, all of the beneficial uses listed in paragraph No. 24, above, for Upper Newport Bay have the potential to be impacted by the pollutants typically contained in sewage. It is unclear what, if any, studies were undertaken to quantify impacts to these beneficial uses.
33. Upper Newport Bay is considered a sensitive waterbody because it is already impacted by pollutants. A program to reduce the load of coliform bacteria (a pollutant contained in sewage) being discharged into Upper Newport Bay was adopted by the Regional Board in 1999 when a total maximum daily load (TMDL) for coliform bacteria was established.

CIVIL LIABILITY CALCULATION

Background and Approach

34. California Water Code section 13385, subdivision. (c)(1) provides that the Regional Board may impose civil liability administratively for noncompliance with waste discharge requirements on a daily basis at a maximum of ten thousand dollars (\$10,000) for each day in which the violation occurs. Section 13385, subdivision (c)(2), further provides that 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 discharge, but not cleaned up, exceeds 1,000 gallons.
35. California Water Code section 13385, subdivision (e), specifies factors that the Regional Board shall consider in establishing the amount of civil liability. The Water Quality Enforcement Policy (hereinafter "Enforcement 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 the methodology addresses the factors in section 13385, subdivision (e).
36. Attachments A, B and C, incorporated herein and made a part of this Order by reference, present the civil liability assessment derived from the use of the penalty methodology in the Enforcement Policy. The policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf
37. The discharges referenced above as Irvine Sewage Lift Station and Indus Line SSO resulted in the unpermitted discharge of waste and pollutants into the Santa Ana Delhi Channel and Upper Newport Bay. The necessary facts, included in the findings in paragraphs No. 1 through No. 33, above, have been considered for the violations alleged herein using the discretionary penalty assessment methodology in the Enforcement Policy. The application of the assessment methodology to each referenced discharge incident can be found in Attachments A and B, respectively, along with the recommended penalty assessment found in Attachment C.
38. The Enforcement Policy authorizes use of an amount less than \$10.00 per gallon to calculate penalties for "high volume discharges." The application of the penalty assessment methodology in the Enforcement Policy, as documented in Attachments A, B and C, produces an appropriate penalty based on calculations using a \$10.00 per gallon amount. Use of a reduced

dollars per gallon amount would produce an inappropriately small penalty in this case, and therefore the Santa Ana Water Board has not used a reduced dollars per gallon calculation as authorized by the "High Volume Discharges" section of the Enforcement Policy.

Minimum and Maximum Administrative Civil Liability

39. The Enforcement Policy requires that the Total Base Liability Amount be compared to the Economic Benefit Amount, and that the Total Base Liability Amount must be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business. The Total Base Liability Amount for this proposed enforcement action (\$306,680) complies with this requirement (minimum liability from Attachments A and B is \$78,451 X 1.1 = \$86,296). The maximum administrative civil liability for the violations alleged herein pursuant to CWC §13385 would be \$851,000, which is comprised of a volume and daily penalty.

Irvine Sewage Lift Station

76,000 gallons x \$10.00 per gallon = \$760,000
+ \$10,000 for one day of discharge
Subtotal: \$770,000

Indus Line SSO

7,100 gallons x \$10.00 per gallon = \$71,000
+ \$10,000 for one day of discharge
Subtotal: \$81,000

Total Maximum Liability: \$851,000

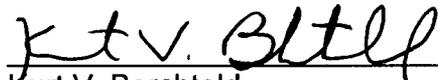
IT IS HEREBY ORDERED, pursuant to Water Code section 13385, that the Costa Mesa Sanitary District is assessed administrative civil liability against Discharger in the amount of **\$364,130** for the discharges described herein.

The Discharger shall submit a check payable to the "State Water Pollution Cleanup and Abatement Account" in the amount of **\$364,130** to the State Water Resources Control Board, Accounting Office, P.O. Box 100, Sacramento CA 95812-0100 no later than **30 days** after the date of this order. A copy of the check shall also be submitted to the State Water Resources Control Board, Office of Enforcement, 1001 I Street, 16th Floor, Sacramento, CA 95812, Attn: Julie Macedo.

Any person aggrieved by this action of the Santa Ana Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 et seq. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of issuance of this

Order, except that if the thirtieth day following the date of the Order falls on a Saturday, Sunday, or state holiday, the petition must be received by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the internet at http://waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

I, **Kurt Berchtold, Executive Officer**, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the Santa Ana Water Board on December 11, 2015.



Kurt V. Berchtold
Executive Officer

Attachment A: Application of Enforcement Policy Factors, Irvine Lift Station SSO
Attachment B: Application of Enforcement Policy Factors, Indus Line SSO
Attachment C: Penalty Calculation Table

**ATTACHMENT A
APPLICATION OF ENFORCEMENT POLICY FACTORS
IRVINE LIFT STATION SSO
ORDER NO. R8-2015-0037**

This document provides details to support Administrative Civil Liability Order No. R8-2015-0037 (hereinafter "Order") for Costa Mesa Sanitary District in response to the alleged violation of California Water Code (hereinafter "CWC") §13385(a)(2) for the discharge of sewage into Santa Ana Delhi Channel and Upper Newport Bay (a water of the United States).

CWC §13385(e) specifies factors that the Regional Board shall consider in establishing the amount of administrative civil liability. The Water Quality Enforcement Policy (hereinafter "Enforcement 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 the 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_final11709.pdf.

The factors described below are the basis for the numerical values shown in Attachment C.

STEP 1: POTENTIAL HARM FACTOR

a) Harm Or Potential Harm To Beneficial Uses

- Score = 4 [Above Moderate Threat]
 1. As noted in Paragraph No. 6 of the Order, sewage contains pollutants, creates nuisance conditions and impairs beneficial uses;
 2. Sewage contains pathogenic organisms that are harmful to public health; and,
 3. The discharge to the Upper Newport Bay impaired the recreational beneficial uses of the Bay and required 2 days of restrictions on recreational uses of the Upper Bay imposed by the Orange County Health Care Agency (hereinafter "OCHCA"). Beaches associated with the Newport Dunes Waterfront Resort and Marina and the Newport Aquatic Center were closed to swimming during the Labor Day weekend.

b) Physical, Chemical, Biological Or Thermal Characteristics

- Score = 3 [Above Moderate Threat]
 1. As noted in Paragraph No. 33 of the Order, the Upper Newport Bay is a sensitive waterbody because of its high value as an estuary containing a State Ecological Reserve and because of ongoing efforts by several cities in Orange County and the County Public Works to reduce coliform bacteria inputs to the waterbody; and
 2. The discharge of untreated sewage to surface waters results in increasing coliform bacteria and in a decrease of dissolved oxygen levels, as untreated

**ATTACHMENT A
APPLICATION OF ENFORCEMENT POLICY FACTORS
IRVINE LIFT STATION SSO
ORDER NO. R8-2015-0037**

sewage is an oxygen-demanding pollutant. The discharge of untreated sewage to surface waters has the potential to raise ammonia concentrations in the surface water, which is toxic to potential receptors.

c) Susceptibility To Cleanup Or Abatement

- Score = 1 [Less Than 50 Percent Susceptible to Cleanup and Abatement]

Only 2,000 gallons of the 79,000 gallons discharged to the Santa Ana Delhi Channel and Upper Newport Bay was recovered.

Score = 8 [4+3+1]

STEP 2: ASSESSMENT FOR DISCHARGE VIOLATIONS

Volume And Total Number Days Of Violation

1. As noted in Paragraph No. 19 of the Order, the discharge volume was 77,000 gallons of sewage. In accordance with CWC 13385(c)(2), the liability assessment is based on 76,000 gallons (77,000 - 1,000 = 76,000).
2. The discharge occurred on August 31, 2013, and therefore occurred within one 24-hour period.

a) Deviation From Requirement

- Score = Moderate
 1. The deviation from requirement is scored as moderate because this SSO reached surface waters, in direct violation of Prohibition C.1 of of the Statewide General Waste Discharge Requirements For Sanitary Sewer Systems, Order No. 2006-0003-DWQ (SSS Order). .
 2. Detection of the SSO was delayed due to the inability of the Discharger's staff to effectively monitor the operational status of the Lift Station during non-business hours. This is in direct violation of Provision D.8 of the SSO Order, which requires that all enrollees to ensure that the system operators (including employees, contractors, or other agents) are adequately trained and possess adequate knowledge, skills, and abilities
 3. It was infeasible for the Discharger to effectively recover sewage that had been discharged to the Santa Ana Delhi Channel. An attempt to recover some of the sewage by containing nuisance runoff in the Santa Ana Delhi Channel and pumping it into the sanitary sewer system was not effective.

**ATTACHMENT A
APPLICATION OF ENFORCEMENT POLICY FACTORS
IRVINE LIFT STATION SSO
ORDER NO. R8-2015-0037**

b) Per Day Factor = 0.4 (Table 2 of Enforcement Policy)

c) Days of violation = 1

d) Initial liability amount = \$304,000
(Discharge volume (77,000 – 1,000 = 76,000 gallons) X Maximum penalty (\$10.00/gallon) X Per Day Factor (0.4) + (Number of days (1) X Maximum penalty (\$10,000) X Per Day Factor (0.4))

STEP 3:NON-DISCHARGE VIOLATION PER DAY FACTOR – N/A

STEP 4: – ADJUSTMENT FACTORS

a) Culpability

- Score = 1.1
 1. The sewage discharged to the Santa Ana Delhi Channel originated from the Discharger's sanitary sewer system.
 2. Detection of the SSO was delayed due to the inability of the Discharger's staff to effectively monitor the operational status of the Lift Station during non-business hours.
 3. There were unresolved operation and maintenance issues with the Lift Station. The Discharger claimed that historic power fluctuations in Southern California Edison's power supply to the Lift Station were interfering with a device that supplies uninterruptible power to its monitoring equipment. Failure of this device contributed to the Discharger not being notified of a malfunction of the Lift Station that resulted in the SSO incident.

The Discharger had recognized the importance of the Lift Station as a critical piece of their sewage collection infrastructure in the watershed served by the Santa Ana Delhi Channel as a result of a regional power outage that occurred in San Diego in 2011. They began a process of siting an emergency engine generator for the Lift Station in February, 2012 when the Discharger's Board approved its recommendation. However, the installation process is ongoing because the generator must be located on property not owned by the Discharger.

4. The restarting of the Lift Station was delayed due to inadequate training of the Discharger's field staff to diagnose a problem with the Lift Station.

The selection of 1.1 serves to increase the initial liability.

**ATTACHMENT A
APPLICATION OF ENFORCEMENT POLICY FACTORS
IRVINE LIFT STATION SSO
ORDER NO. R8-2015-0037**

b) Cleanup And Cooperation

- Score = 0.8

As noted above, timely recovery of the sewage discharged to the Santa Ana Delhi Channel was infeasible. The Discharger cooperated fully with Board staff in its investigation and follow up to this incident.

The selection of 0.8 serves to decrease the initial liability.

c) History Of Violations

- Score = 1.0

According to the State Water Resources Control Board's CIWQS data base and OCHCA's records, there have been eleven SSOs in the sewage collection system tributary to the Irvine Sewage Lift Station since 1997. None of these SSOs resulted in any form of enforcement response by Board staff. There was no evidence presented to suggest that these SSOs were caused by problems with the Discharger's collection system or that any of these SSOs reached the Santa Ana Delhi Channel. There is no evidence to suggest that the causes of these SSOs were similar or related to the cause of the Irvine Lift Station SSO.

The selection of 1.0 has no effect on the initial liability.

- d) Maximum for this Violation
 $\$770,000 = (76,000 \text{ gallons discharge} \times \$10/\text{gallon} + \$10,000/\text{day})$

STEP 5 – TOTAL BASE LIABILITY

\$271,040

STEP 6 – ABILITY TO PAY AND ABILITY TO CONTINUE IN BUSINESS

- Score = 1.0

The Discharger's published budget for its fiscal year that ended June 30, 2013 indicated a net surplus of funds (excluding a set-aside for Capital Improvement Projects) in excess of \$1.4 million for its sanitary sewer system

**ATTACHMENT A
APPLICATION OF ENFORCEMENT POLICY FACTORS
IRVINE LIFT STATION SSO
ORDER NO. R8-2015-0037**

operation. Discharger did not provide any evidence indicating that the proposed liability would adversely impact continued operation of its system or otherwise cause undue financial hardship for the District.

STEP 7 – OTHER FACTORS AS JUSTICE MAY REQUIRE

- Costs of Investigation and Enforcement Adjustment

The Enforcement Policy provides that the costs of investigation and enforcement incurred by the Regional Board Prosecution staff are considered as “other factors as justice may require” and should be added to the liability amount. An amount of \$57,450 has been included in the combined liability assessment for the Irvine Lift Station and Indus Line SSOs. This amount was derived from the following breakdown of Regional Board staff involvement:

Investigation	(90 hours X \$150 per hour) =	\$ 13,500
Documentation	(229 hours X \$150 per hour) =	\$ 34,350
Legal Review	(64 hours X \$150 per hour) =	<u>\$ 9,600</u>
TOTAL		\$ 57,450

This amount includes only costs leading up the drafting and circulation of the April 30, 2015 Administrative Civil Liability Complaint. As noted above, the staff costs include costs related to both the Irvine Lift Station and Indus Line SSOs.

**ATTACHMENT A
APPLICATION OF ENFORCEMENT POLICY FACTORS
IRVINE LIFT STATION SSO
ORDER NO. R8-2015-0037**

STEP 8 – ECONOMIC BENEFIT

The economic benefit for this violation is \$60,128, which is comprised of consideration for costs of installing an improved electrical panel, Smartcover monitoring and alarm system, and hiring a new staff person. The Enforcement Policy requires that the economic benefit, plus 10%, be captured, so the recommended penalty must be greater than \$66,141 (($\$31 + \$7 + \$60,090$) X 1.1 = \$66,141).

R8-2015-0025 - Costa Mesa Sanitary District ~ Irvine Sewage Lift Station, Indus Line								
Compliance Action (Determine the actions required to have prevented the violation)	One-Time Nondepreciable Expenditure			Annual Cost		Non-Compliance Date	Compliance or Hearing Date	Benefit of Noncompliance
	Amount	Date ¹	Delayed? ²	Amount	Date ¹			
Install Standard Electrical Control Panel - Irvine Sewage Lift Station	\$12,969	8/31/2013	y			8/31/2013	10/18/2013	\$31
Install Hadronex Smartcover Monitoring and Alarm System - Irvine Sewage Lift Station	\$4,770	8/31/2013	y			8/31/2013	9/18/2013	\$7
Hire a SCADA Technician/ Industrial Electrician - Irvine Sewage Lift Station				\$65,146	6/10/2014	8/31/2013	7/14/2014	\$60,090
Two Additional Cleanings per year - Indus Line				\$3,072	4/17/2015	1/1/2010	7/24/2015	\$18,323
Totals	\$17,739			\$68,218				\$78,451
						Date of run:	4/29/2015 13:42	

Penalty Payment Date:	July 24, 2015
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Income Tax Schedule:	muni
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Source: USEPA BEN Model:	Version 5.4.1
Analyst:	MM Ransom

¹ This is the Date of the cost estimate. When was the cost estimate made?

² Enter "y" if delayed, and "n" if avoided.

The economic benefit was derived using the U.S. EPA's BEN Model, and the avoided or delayed costs, as described in the above diagram.

STEP 9: MAXIMUM AND MINIMUM LIABILITY AMOUNTS

1. Maximum Liability

The maximum liability provided for by statute is \$770,000

2. Minimum Liability

The minimum liability amount required by the Enforcement Policy is \$66,141 (Economic Benefit +10%).

**ATTACHMENT A
APPLICATION OF ENFORCEMENT POLICY FACTORS
IRVINE LIFT STATION SSO
ORDER NO. R8-2015-0037**

Step 10: Final Liability Amount for the Irvine Sewage Lift Station Violation

Based on the foregoing analysis, and consistent with the Enforcement Policy requirement that the discretionary administrative civil liability must not exceed the maximum liability amount nor be less than the minimum liability amount, the proposed civil liability is \$328,490.

ATTACHMENT B
APPLICATION OF ENFORCEMENT POLICY FACTORS
INDUS LINE SSO
ORDER NO. R8-2015-0037
JANUARY 1, 2015 SSO

This document provides details to support Administrative Civil Liability Order No. R8-2015-0037 (hereinafter "Order") for Costa Mesa Sanitary District in response to the alleged violation of California Water Code (hereinafter "CWC") §13385(a)(2) for the discharge of sewage into Santa Ana Delhi Channel and Upper Newport Bay (a water of the United States).

CWC §13385(e) specifies factors that the Regional Board shall consider in establishing the amount of administrative civil liability. The Water Quality Enforcement Policy (hereinafter "Enforcement 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 the 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_final11709.pdf

The factors described below are the basis for the numerical values shown in Attachment C.

STEP 1: POTENTIAL HARM FACTOR

a) Harm Or Potential Harm To Beneficial Uses

- Score = 4 [Above Moderate Threat]
 1. As noted in Paragraph No. 6 of the Order, sewage contains pollutants, creates nuisance conditions and impairs beneficial uses;
 2. Sewage contains pathogenic organisms that are harmful to public health; and,
 3. The discharge to the Upper Newport Bay impaired the recreational beneficial uses of the bay and required 3 days of restrictions on recreational uses of the Upper Bay imposed by the Orange County Health Care Agency. Beaches associated with the Newport Dunes Waterfront Resort and Marina and the Newport Aquatic Center were closed to swimming.

b) Physical, Chemical, Biological Or Thermal Characteristics

- Score = 3 [Above Moderate Threat]
 1. As noted in Paragraph No. 33 of the Order, the Upper Newport Bay is a sensitive waterbody because of its high value as an estuary containing a State Ecological Reserve and because of ongoing efforts by several cities in Orange County and the County Public Works to reduce coliform bacteria inputs to the waterbody; and
 2. The discharge of untreated sewage to surface waters results in increasing coliform bacteria and in a decrease of dissolved oxygen levels, as untreated

**ATTACHMENT B
APPLICATION OF ENFORCEMENT POLICY FACTORS
INDUS LINE SSO
ORDER NO. R8-2015-0037
JANUARY 1, 2015 SSO**

sewage is an oxygen-demanding pollutant. The discharge of untreated sewage to surface waters has the potential to raise ammonia concentrations in the surface water, which is toxic to potential receptors.

c) Susceptibility To Cleanup Or Abatement

- Score = 1 [Less Than 50 Percent Susceptible to Cleanup and Abatement]

No sewage was recovered of the 8,100 gallons discharged to the Santa Ana Delhi Channel and Upper Newport Bay.

Score = 8 [4+3+1]

STEP 2: ASSESSMENT FOR DISCHARGE VIOLATIONS

Volume And Total Number Days Of Violation

1. As noted in Paragraph No. 27 of the Order, the discharge volume was 8,100 gallons of sewage. In accordance with CWC 13385(c)(2), the liability assessment is based on 7,100 gallons (8,100 - 1,000 = 7,100).
2. The discharge occurred on January 1, 2015, and, therefore, occurred within one 24-hour period.

a) Deviation From Requirement

- Score = Moderate
 1. The deviation from requirement is scored as moderate because this SSO reached waters of the US, in direct violation of Prohibition C.1 of of the Statewide General Waste Discharge Requirements For Sanitary Sewer Systems, Order No. 2006-0003-DWQ (SSS Order)..
 2. The Discharger's after-hours emergency response contractor failed to respond to the SSO incident. This delayed the effort to clear the blockage and cease the overflow of sewage, and, thus, increased the volume of discharge to the adjacent Santa Ana Delhi Channel. This delay violated Provision D.7 of Order No. 2006-0003-DWQ because the Discharger failed to "...take all feasible steps and necessary remedial actions to 1) control or limit the volume of untreated or partially treated wastewater discharged, 2) terminate the discharge,...."

b) Per Day Factor = 0.4 (Table 2 of Enforcement Policy)

c) Days of violation = 1

**ATTACHMENT B
APPLICATION OF ENFORCEMENT POLICY FACTORS
INDUS LINE SSO
ORDER NO. R8-2015-0037
JANUARY 1, 2015 SSO**

- d) **Initial liability amount** = \$32,400
(Discharge volume (8,100 – 1,000 = 7,100 gallons) X Maximum penalty (\$10.00/gallon) X Per Day Factor (0.4) + (Number of days (1) X Maximum penalty (\$10,000) X Per Day Factor (0.4))

STEP 3: NON-DISCHARGE VIOLATIONS PER DAY FACTOR—N/A

STEP 4: ADJUSTMENT FACTORS

a) **Culpability**

- Score = 1.1
 1. The sewage discharged to the Santa Ana Delhi Channel originated from the Discharger's sanitary sewer system.
 2. The Discharger had video inspected the Indus Line in December, 2007 and identified at least one reach of the sewer main that exhibited a sag. A sag represents an abnormality in the vertical alignment of the sewer main that can contribute to the cause of blockages in the pipeline. This finding caused the Discharger to increase the cleaning frequency of the Indus Line to twice per year.
 3. The Indus Line had last been cleaned in June 2014 and was scheduled to be cleaned in December 2014; however, the December 2014 cleaning had been postponed.
 4. The duration of the SSO incident, once known by the Discharger, was prolonged due to the non-responsiveness of their after-hours emergency response contractor. Newport Beach city staff was requested to supply the cleaning apparatus to clear the blockage.
 5. The Discharger has chosen to clean the Indus Line twice a year for the last five years. However, after the January SSO incident, the Discharger has placed this reach of the sewer main on a schedule to be relined during the next budget year.

The selection of 1.1 serves to increase the initial liability.

b) **Cleanup And Cooperation**

- Score = 1.0

The Discharger had to rely on Newport Beach staff and sewer cleaning apparatus to clear the blockage from the sewer. Access and the opportunity to contain the sewage being discharged to the Santa Ana Delhi Channel was inhibited due to its depth (15

**ATTACHMENT B
APPLICATION OF ENFORCEMENT POLICY FACTORS
INDUS LINE SSO
ORDER NO. R8-2015-0037
JANUARY 1, 2015 SSO**

to 20 feet) and channel configuration (vertical walls). Therefore, no sewage was recovered. Orange County Public Works retained a contractor to rinse the affected storm drain inlet, connecting storm drain piping and floor of the Santa Ana Delhi Channel impacted by the sewage. All rinse water was recovered.

The Discharger was cooperative with Regional Board staff in providing all requested SSO incident related information.

The selection of 1.0 has no effect on the initial liability, neither increasing nor decreasing the recommended administrative liability.

c) History Of Violations

- Score = 1.0

The Discharger has experienced six SSOs since 1999 associated with the Indus Line. None of these SSOs resulted in any form of enforcement response by Board staff. There was no evidence presented to suggest that these SSOs reached the Santa Ana Delhi Channel. There is insufficient evidence to conclude that the cause of these SSOs was related to the cause of the January 1, 2015 SSO.

The selection of 1.0 has no effect on the initial liability.

- d) Maximum for this Violation

$$\$81,000 = (7,100 \text{ gallons discharge} \times \$10/\text{gallon} + \$10,000/\text{day})$$

STEP 5: - TOTAL BASE LIABILITY

\$35,640

STEP 6 – ABILITY TO PAY AND ABILITY TO CONTINUE IN BUSINESS

- Score = 1.0

The Discharger's published budget for its fiscal year that ended June 30, 2014 indicated that revenues for the Liquid Waste Fund exceeded expenses by \$1.7 million dollars before an allowance for a deduction for capital improvement projects. Discharger did not provide any evidence indicating

**ATTACHMENT B
APPLICATION OF ENFORCEMENT POLICY FACTORS
INDUS LINE SSO
ORDER NO. R8-2015-0037
JANUARY 1, 2015 SSO**

that the proposed liability would adversely impact continued operation of its system or otherwise cause undue financial hardship for the District.

STEP 7 – OTHER FACTORS AS JUSTICE MAY REQUIRE

- Staff Costs

The Enforcement Policy provides that the costs of investigation and enforcement incurred by the Regional Board Prosecution staff are considered “other factors as justice may require” and should be added to the liability amount. The combined staff costs for investigation and enforcement related to the Irvine Lift Station and Indus Line SSOs are included in Attachment A.

STEP 8 – ECONOMIC BENEFIT

The economic benefit for this violation is \$18,323, which is comprised of consideration for the cost of increasing the sewer line cleaning events to one every quarter of the year for the same length of time the cleaning frequency has been once every six months. The Enforcement Policy requires that the economic benefit plus 10% be captured, so the recommended penalty must be greater than \$20,155 (\$18,323 X 1.1 = \$20,155).

R8-2015-0025 - Costa Mesa Sanitary District - Irvine Sewage Lift Station, Indus Line								
Compliance Action (Determine the actions required to have prevented the violation)	One-Time Nondepreciable Expenditure			Annual Cost		Non-Compliance Date	Compliance or Hearing Date	Benefit of Noncompliance
	Amount	Date ¹	Delayed? ²	Amount	Date ¹			
Install Standard Electrical Control Panel - Irvine Sewage Lift Station	\$12,969	8/31/2013	y			8/31/2013	10/18/2013	\$31
Install Hadronex Smartcover Monitoring and Alarm System - Irvine Sewage Lift Station	\$4,770	8/31/2013	y			8/31/2013	9/18/2013	\$7
Hire a SCADA Technician/Industrial Electrician - Irvine Sewage Lift Station				\$65,146	6/10/2014	8/31/2013	7/14/2014	\$60,090
Two Additional Cleanings per year - Indus Line				\$3,072	4/17/2015	1/1/2010	7/24/2015	\$18,323
Totals	\$17,739			\$68,218				\$78,451

Date of run:	4/29/2015 13:42
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Penalty Payment Date:	July 24, 2015
Income Tax Schedule:	muni

Source: USEPABEN Model:	Version 5.4.1
Analyst:	MM Ransom

Status:

¹ This is the Date of the cost estimate. When was the cost estimate made?

² Enter "y" if delayed, and "n" if avoided.

The economic benefit was derived using the U.S. EPA's BEN Model, and the avoided or delayed costs, as described in the above diagram.

**ATTACHMENT B
APPLICATION OF ENFORCEMENT POLICY FACTORS
INDUS LINE SSO
ORDER NO. R8-2015-0037
JANUARY 1, 2015 SSO**

STEP 9: MAXIMUM AND MINIMUM LIABILITY AMOUNTS

1. Maximum Liability

The maximum liability provided for by statute is \$81,000

2. Minimum Liability

The minimum liability amount required by the Enforcement Policy is \$20,155 (Economic Benefit +10%).

STEP 10: FINAL LIABILITY AMOUNT FOR THE INDUS LINE VIOLATION

Based on the foregoing analysis, and consistent with the Enforcement Policy requirement that the discretionary administrative civil liability must not exceed the maximum liability amount nor be less than the minimum liability amount, the proposed civil liability is \$35,640.

ADMINISTRATIVE CIVIL LIABILITY ORDER
ORDER NO. R8-2015-0037
ATTACHMENT C

Instructions

1. Select Harm/Potential Harm for Discharge Violations
2. Select Degree of Toxicity
3. Select Susceptibility of Cleanup or Abatement
4. Select Deviation from Standard
5. Click "Determine per Gallon/Day..."
6. Fill in each parameter to calculate Final Liability Amount

Select Item **4 = Above Moderate**
 Select Item **3 = Discharged material poses above moderate**
 Select Item **< 50% of Discharge Susceptible to Cleanup or A**
 Select Item **Moderate**

Select Item **4 = Above Moderate**
 Select Item **3 = Discharged material poses above moderate**
 Select Item **< 50% of Discharge Susceptible to Cleanup or A**
 Select Item **Moderate**

Discharger Name/ID:

		Irvine Sewage Lift Sta.		Indus Sewer Line SSO		
Discharge Violations	Step 1	Potential Harm Factor (Generated from Button)	8		8	
	Step 2	Per Gallon Factor (Generated from Button)	0.4		0.4	
		Gallons	76,000		7,100	
		Statutory / Adjusted Max per Gallon (\$)	\$ 10		\$ 10	
		Total		\$ 304,000		\$ 28,400
		Per Day Factor (Generated from Button)	0.4		0.4	
	Days	1		1		
	Statutory Max per Day	\$ 10,000		\$ 10,000		
	Total		\$ 4,000		\$ 4,000	
Non-Discharge Violations	Step 3	Per Day Factor				
		Days				
		Statutory Max per Day				
		Total	\$ -		\$ -	
Initial Amount of the ACL			\$ 308,000.00		\$ 32,400.00	
Additional Factors	Step 4	Culpability	1.1	\$ 338,800.00	1.1	\$ 35,640.00
		Cleanup and Cooperation	0.8	\$ 271,040.00	1	\$ 35,640.00
		History of Violations	1	\$ 271,040.00	1	\$ 35,640.00
	Step 5	Total Base Liability Amount		\$ 306,680.00		
Step 6	Ability to Pay & to Continue in Business	1	\$ 306,680.00			
Step 7	Other Factors as Justice May Require	1	\$ 306,680.00			
	Staff Costs	\$ 57,450	\$ 364,130.00			
Step 8	Economic Benefit	\$ 86,296	\$ 364,130.00			
Step 9	Minimum Liability Amount	\$ 86,296				
	Maximum Liability Amount	\$ 851,000				
Step 10	Final Liability Amount		\$ 364,130.00			

Penalty Day Range Generator

Start Date of Violation=
 End Date of Violation=

Maximum Days Fined (Step 2) = Days
 Minimum Days Fined (Step 2) = Days