



Linda S. Adams  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board San Diego Region

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Arnold Schwarzenegger  
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353  
(619) 467-2952 • Fax (619) 571-6972  
<http://www.waterboards.ca.gov/sandiego>

September 26, 2008

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
7007 1490 0003 8753 5469

Mr. Mike Mercereau  
Director of Public Works  
City of San Marcos  
201 Mata Way  
San Marcos, CA 92069-2949

Dear Mr. Mercereau:

**NOTICE OF HEARING AND ISSUANCE OF ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R9-2008-0080 TO THE CITY OF SAN MARCOS FOR FAILURE TO SUBMIT INFORMATION REQUIRED PURSUANT TO ORDER NO. R9-2006-0044**

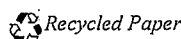
Enclosed please find Administrative Civil Liability Complaint (Complaint) No. R9-2008-0080 against the City of San Marcos (City) for failure to submit information required by Water Quality Investigative Order No. R9-2006-0044, as amended. The Complaint recommends the California Regional Water Quality Control Board, San Diego Region (Regional Board), impose a civil liability of \$59,975 for these violations.

**Waiver of Hearing**

Pursuant to Water Code section 13323, the Regional Board will hold a hearing on the Complaint no later than 90 days after it is served. The City may elect to waive its right to a hearing before the Regional Board and agree to pay the proposed liability. Waiver of the hearing constitutes admission of the validity of the allegations of violation in the Complaint and acceptance of the assessment of civil liability in the amount of \$59,975 as set forth in the Complaint. If the City wishes to exercise this option, it must complete the following:

1. **By 5:00 p.m., October 10, 2008**, an authorized agent must sign the enclosed waiver and submit it to the Regional Board, along with a cashier's check in the amount of \$59,975 made payable to the "State Water Pollution Cleanup and Abatement Account";

*California Environmental Protection Agency*



2. **By October 14, 2008**, the City must publish the enclosed public notice in the San Diego Union Tribune, and the San Diego Union Tribune North County edition newspaper; and
3. **By 5:00 p.m., October 21, 2008**, the City must submit verification to the Regional Board that the enclosed public notice has been published.

\*Please note that the City's waiver and agreement to pay the proposed liability constitutes a proposed settlement that will not become final until after a 30-day public comment period, as provided by the State Water Resources Control Board Water Quality Enforcement Policy (version dated February 12, 2002). As described in the enclosed waiver, the Regional Board Assistant Executive Officer may withdraw the Complaint, return payment and issue a new complaint should new information be received during the comment period. If no information is received which causes the Assistant Executive Officer to withdraw the Complaint, then the settlement will be brought before the full Regional Board for approval at a future meeting. **The settlement will not be effective until approved by the Regional Board.**

### Public Hearing


Alternatively, if the City elects to proceed to a public hearing, a hearing is tentatively scheduled to be held at the Regional Board meeting on December 10, 2008. The meeting is scheduled to convene at 9:00 a.m. at the Regional Board Office, 9174 Sky Park Court, Suite 100, San Diego, CA. At that time, the Regional 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 also find a draft of the procedures I am recommending that the Regional Board follow in conducting the hearing. Please note that comments on the proposed procedures are **due by October 3, 2008** to the Regional Board's advisory attorney, Catherine George.

Please contact State Water Resources Control Board Office of Enforcement Attorney David Boyers at (916) 341-5276 or Ms. Amy Grove at (858) 637-7136 or via e-mail at [agrove@waterboards.ca.gov](mailto:agrove@waterboards.ca.gov) if you have any questions concerning this matter.

Respectfully,



 Michael P. McCann  
Assistant Executive Officer

Enclosures: 1. Complaint No. R9-2008-0080  
2. Waiver of Public Hearing Form  
3. Public Notice of Waiver  
4. Notice of Public Hearing

cc: Mr. Richard Opper, Esq. Opper and Varco, LLP, 225 Broadway, Suite 1900, San Diego, CA 92101

Mr. James O'Day, Esq. County of San Diego, County Administration Center, 1600 Pacific Highway, Room 355, San Diego, CA 92101

Mr. Garth Koller, City of San Marcos, 1 Civic Center Drive, San Marcos, CA 92069-2949

Ms. Rebecca Lafreniere, County of San Diego Local Enforcement Agency, 9325 Hazard Way, San Diego, CA 92123

Ms. Vicki Gallagher, County of San Diego, Department of Public Works, 5201 Ruffin Road, Suite D, San Diego, CA 92123

Mr. David Boyers, Senior Staff Counsel, State Water Resources Control Board Office of Enforcement, 1001 I Street, 16<sup>th</sup> Floor, Sacramento, CA 95814

Ms. Catherine George, Senior Staff Counsel, Regional Water Quality Control Board, San Diego Region, 9174 Sky Park Court, Suite 100, San Diego, CA 92123-4353