

San Diego Regional Water Quality Control Board

December 19, 2018

Mr. Joe Bride
Public Works Director
City of Del Mar
2240 Jimmy Durante Blvd.
Del Mar, CA 92014

CERTIFIED MAIL
7015 0640 0006 1569 9722
In reply refer to:
CW631930:clemente

SUBJECT: OFFER R9-2019-0018 TO SETTLE ADMINISTRATIVE CIVIL LIABILITY FOR 10/14/18 SANITARY SEWER OVERFLOW TO THE PACIFIC OCEAN, SPILL ID # 851738, WDID 9 SSO10648

Mr. Bride:

This letter (hereafter, "Settlement Offer") contains an offer from the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) Prosecution Team to settle potential claims for administrative civil liability arising out of the discharge of 4,250 gallons of untreated sewage to the Pacific Ocean. The City of Del Mar (City) allegedly violated multiple provisions of the Clean Water Act, Porter-Cologne Water Quality Control Act, and relevant state and regional Waste Discharge Requirements by discharging 4,250 gallons of untreated sewage to the Pacific Ocean on October 14, 2018.

This Settlement Offer provides the City with an opportunity to resolve alleged violations through payment of forty-two thousand five hundred dollars (\$42,500). Please read this letter carefully and respond no later than January 21, 2019.

Description of Alleged Violations

The San Diego Water Board Prosecution Team (Prosecution Team) alleges the following violations, as summarized below, and further described in the attached documents (Exhibits 1-3).

- 1. Violation #1, discharge of untreated sewage:** The discharge of untreated sewage is a violation of Prohibition C.1 of State Water Board Order No. 2006-003-DWQ, which prohibits the discharge of untreated or partially treated wastewater to waters of the United States and Prohibition C.2 which prohibits the discharge of untreated or partially treated wastewater that creates a nuisance, as defined in California Water Code (CWC) section 13050(m). This unauthorized discharge to waters of the United States also violates federal Clean Water Act section 301 (33 U.S.C. 1311). The discharge of raw sewage is also a violation of San Diego Water Board Order No. R9-2007-0005, CWC section 13376, and the Water Quality Control Plan for the San Diego Basin Waste Discharge Prohibitions Nos. 1 and 9. The City is therefore subject to administrative civil liability pursuant to CWC section 13385, subdivisions (a)(1) and (a)(5).

Statutory Liability

Pursuant to CWC section 13385, the City is liable for administrative civil liabilities of up to \$10,000 per violation for each day in which the violation occurs and \$10 per gallon discharged in excess of the first 1,000 gallons not cleaned up. The statutory minimum civil liability is the economic benefit resulting from the violations. The State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy¹) states that the minimum penalty is to be the economic benefit plus 10 percent. For the violations described in the attachments, the maximum potential liability is **\$42,500** (Exhibit 2) and the statutory minimum liability is **\$11,627** (Exhibit 3).

Proposed Settlement Offer

The Prosecution Team proposes to resolve the alleged violations with this Settlement Offer of \$42,500. This Settlement Offer was determined based on an assessment of the factors set forth in CWC section 13385(e) using the penalty methodology set forth in the Enforcement Policy. The enclosed "Liability Methodology" (Exhibit 2) describes in detail how the penalty amount was calculated. The Prosecution Team believes that the proposed resolution of the alleged violations is fair and reasonable, fulfills the San Diego Water Board's enforcement objectives, and is in the best interest of the public.

Should the City choose *not* to accept this Settlement Offer, please be advised that the Prosecution Team reserves the right to seek a higher liability amount, up to the maximum allowed by statute by referring the matter to the Attorney General's Office. The Prosecution Team also reserves the right to conduct additional investigations, including issuance of investigation orders and/or subpoenas to determine if additional violations occurred. Any additional violations subjecting the City to liability may be included in a formal enforcement action. The City can avoid the risks inherent in a formal enforcement action and settle the alleged violations by accepting this Settlement Offer. The Prosecution Team reserves the right to take further enforcement actions against the City for all past violations not identified in this Settlement Offer and future violations of the CWC or subsequently adopted orders.

Options for Responding to the Settlement Offer

Option A: Accept the Offer

If the City chooses to accept this Settlement Offer, then the enclosed *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver)* shall be completed and submitted, via email, no later than **January 21, 2019** to the following address:

¹ The 2017 Water Quality Enforcement Policy is available on-line at:
https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

California Regional Water Quality Control Board, San Diego Region
Attention: CW631930:clemente; R9-2019-0018
Email: SanDiego@waterboards.ca.gov

Important! Upon receipt of the *Acceptance and Waiver*, this settlement will be publicly noticed for a 30-day comment period as required by federal regulations. If no substantive comments are received within the 30 days, the Prosecution Team will ask the San Diego Water Board's Executive Officer to formally endorse the *Acceptance and Waiver* as an Order of the San Diego Water Board. An invoice will then be mailed to the City requiring payment of the **\$42,500** administrative civil liability within 30 days from when the Settlement offer is signed by the Executive Officer.

If, however, substantive comments are received in opposition to this settlement or the Executive Officer declines to accept the settlement, then the Settlement Offer may be withdrawn. In this case, the City will be notified, and its waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. An administrative civil liability complaint may be issued, and the matter may be set for an evidentiary hearing.

Option B: Contest the Alleged Violations

If the City wishes to contest the violations or the methodology used to determine the proposed liability, it must submit a written response identifying the basis for the challenge, including any evidence to support its claims. The City's response must be received by the San Diego Water Board no later than **January 21, 2019**. The Prosecution Team will evaluate the City's basis for a challenge and may seek clarifying information or schedule an in-person meeting. The Prosecution Team will inform the City as to whether a reduction in the settlement amount is warranted, or whether the original settlement amount is appropriate. The City will be provided a final opportunity to accept the revised/original settlement amount before proceeding to formal enforcement.

Option C: Reject Offer

If the City chooses to reject this Settlement Offer or does not complete and return the *Acceptance and Waiver*, it should expect that the Prosecution Team would conduct further investigation of the violations, issue an assessment of civil liabilities complaint, and schedule a evidentiary hearing. The City will receive notice of any deadlines associated with that action. As previously stated, in such an action, the liability amount sought or imposed may exceed the liability amount set forth in this Settlement Offer.

If you have any questions about this settlement offer, please contact Ms. Chiara Clemente, Enforcement Coordinator, at (619) 521-3371 or at chiara.clemente@waterboards.ca.gov.

Respectfully,



JAMES G. SMITH
Assistant Executive Officer

cc (via email): Chiara Clemente

Chiara.Clemente@waterboards.ca.gov

Brandi Outwin-Beals, San Diego Water Board,

Brandi.Outwin-Beals@waterboards.ca.gov

Laura Drabandt, State Water Resources Control Board Office of Enforcement,

Laura.Drabandt@waterboards.ca.gov

David Boyers, State Water Resources Control Board Office of Enforcement,

David.Boyers@waterboards.ca.gov

Enclosures: Acceptance of Settlement Offer and Waiver of Right to a Hearing

Exhibit 1 – San Diego Water Board Inspection Report – November 7, 2018

Exhibit 2 – Liability Methodology

Exhibit 3 – Economic Benefit Analysis

| Tech Staff Info & Use | |
|-----------------------|-----------|
| Enforcement ID | |
| Violation ID | 1049639 |
| WDID | 9SSO10648 |
| NPDES No. | |
| Inspection ID | 34431139 |

ORDER NO. R9-2019-0018

ACCEPTANCE OF SETTLEMENT OFFER AND WAIVER OF RIGHT TO A HEARING
FOR

CITY OF DEL MAR
SAN DIEGO COUNTY

By signing below and returning this *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver)* to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), the City of Del Mar (City) hereby accepts the Settlement Offer described in the letter dated December 19, 2018 and titled *Offer to Settle Administrative Civil Liability for 10/14/18 Sanitary Sewer Overflow to the Pacific Ocean*. The City also hereby waives the right to a hearing before the San Diego Water Board to dispute the alleged violations described in the Settlement Offer and its enclosures.

The City agrees that the Settlement Offer shall serve as a complaint pursuant to Article 2.5 of the California Water Code (Water Code) and that no separate complaint is required for the San Diego Water Board to assert jurisdiction over the alleged violations. The City agrees to perform the following:

- Pay an administrative civil liability in the sum of **forty-two thousand five hundred dollars (\$42,500)** by cashier's check or certified check made payable to the "State Water Resources Control Board Cleanup and Abatement Account." This payment shall be deemed payment in full of any civil liability pursuant to Water Code section 13385 that might otherwise be assessed for violations described in the Settlement Offer and its enclosures.
- Fully comply with the conditions of State Water Resources Control Board Order No. 2006-003-DWQ and San Diego Water Board Order No. R9-2007-0005, as amended, for the entirety of its sewage collection system.

The City understands that by signing this *Acceptance and Waiver*, it has waived its rights to contest the allegations in the Settlement Offer and the civil liability amount for the alleged violations. The City further understands that this *Acceptance and Waiver* does not address or resolve any liability for any violation not specifically identified in the Settlement Offer and its enclosures.

Upon execution by the City, the *Acceptance and Waiver* shall be returned to the following address:

California Regional Water Quality Control Board, San Diego Region
Attention: CW631930:cclemente; R9-2019-0018
Email: SanDiego@waterboards.ca.gov

The City understands that federal regulations require the San Diego Water Board Prosecution Team (Prosecution Team) to publish notice of and provide at least 30 days for public comment on any proposed resolution of an enforcement action for violations of the Clean Water Act. Accordingly, this *Acceptance and Waiver*, prior to being formally endorsed by the San Diego Water Board Executive Officer (acting as head of the Advisory Team), will be published as required by law for public comment.

ORDER NO. RS-2019-0018

If no comments are received within the notice period that cause the Prosecution Team to reconsider the Settlement Offer, then the Prosecution Team will present this *Acceptance and Waiver* to the San Diego Water Board's Executive Officer for formal endorsement on behalf of the San Diego Water Board.

The City understands that if significant comments are received in opposition to the settlement, then the offer may be withdrawn by the Prosecution Team. If the Settlement Offer is withdrawn, then the City will be notified and its waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued and the matter may be set for a hearing.

The City understands that once this *Acceptance and Waiver* is formally endorsed then the full payment is a condition of this *Acceptance and Waiver*. An invoice will be sent upon endorsement, and full payment will be due within 30 days of the date of the invoice.

I hereby affirm that I am duly authorized to act on behalf of and to bind the City in the making and giving of this *Acceptance and Waiver*.

By: J. Post
Title: PUBLIC WORKS DIRECTOR
Date: 1/17/19

IT IS SO ORDERED, pursuant to Water Code section 13385.

By: David W. Gibson
David W. Gibson, Executive Officer, San Diego Water Board

Date: 20 February 2019

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO REGION
COMPLIANCE ASSURANCE UNIT

FACILITY INSPECTION REPORT

INSPECTION DATE: **11/7/18**

TIME: **1030**

WDID: **9SSO10648; PIN: 631930**

FACILITY REPRESENTATIVE(S) PRESENT DURING INSPECTION: **Victor Sturm, Peter Kiefer, Alex Panduro**

Joe Bride, Public Works Director

NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

City of Del Mar, Collection System

FACILITY OR DEVELOPER NAME (if different from owner)

2240 Jimmy Durante Blvd

FACILITY STREET ADDRESS

Mikhail Ogawq

OWNER CONTACT NAME AND PHONE #

619-994-858-755-3294-7074

FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

Del Mar, CA

FACILITY CITY AND STATE

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS

- SSS WDR NOS. 2006-0003-DWQ and R9-2007-0005
- MS4 URBAN RUNOFF REQUIREMENTS NPDES NOS. CAS0108758, CAS0108740 or CAS0108766
- GENERAL PERMIT ORDER NO. 99-08-DWQ, NPDES NO. CAS000002 - CONSTRUCTION
- GENERAL PERMIT ORDER NO. 99-06-DWQ, NPDES NO. CAS000003 - CALTRANS
- GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS
- GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
- SECTION 401 WATER QUALITY CERTIFICATION
- CWC SECTION 13264

INSPECTION TYPE (Check One)

- A1 ___ "A" type compliance--Comprehensive inspection in which samples are taken. (EPA Type S)
- B1 ___ "B" type compliance--A routine nonsampling inspection. (EPA Type C)
- 02 X Noncompliance follow-up--Inspection made to verify correction of a previously identified violation.
- 03 ___ Enforcement follow-up--Inspection made to verify that conditions of an enforcement action are being met.
- 04 ___ Complaint--Inspection made in response to a complaint.
- 05 ___ Pre-requirement--Inspection made to gather info. relative to preparing, modifying, or rescinding requirements.
- 06 ___ No Exposure Certification (NEC) - verification that there is no exposure of industrial activities to storm water.
- 07 ___ Notice of termination request for industrial facilities or construction sites - verification that the facility or construction site is not subject to permit requirements (Type, NOT I or NOT C - circle one).
- 08 ___ Compliance Assistance Inspection - Outreach inspection due to discharger's request for compliance assistance.

INSPECTION FINDINGS

Y Were violations noted during this inspection? (Yes/No/Pending Sample Results)

N Were samples taken? (N=no) If YES then, G= grab or C= Composite and attach a copy of the sample results/chain of custody form

I. COMPLIANCE HISTORY

Inspection conducted by Chiara Clemente and Fisayo Osibodu of the San Diego Water Board (SDWB). Meeting with Del Mar Public Works staff (Discharger) to discuss Sanitary Sewer Overflow (SSO) that occurred on 10/14/18 at 8th St., west of Stratford Court (Manhole MH-B9-07); CIWQS Spill ID # 851738. Inspection did not evaluate all aspects of compliance with sanitary sewer system Waste Discharge Requirements (WDRs); only spill response and related requirements of the WDR.

CIWQS SSO history for this discharger is as follows (for past 5 years):

| Event ID | Report Version | Spill Category | Spill Volume (gallons) | Spill Start Date & Time | Location |
|----------|----------------|----------------|------------------------|-------------------------|--|
| 851738 | 2 | Category 1 | 10,500 | 10/14/2018 11:00 | 8th St W. of Stratford Court (at bluffs above RxR tracks), aka Manhole MH-B9-07 |
| 832141 | 1.4 | Category 2 | 125,000 | 1/26/2017 2:15 | 21st Street Pump Station bypass system |
| 818828 | 1.2 | Category 2 | 2,750 | 10/18/2015 0:00 | Manhole B5-37 on Camino del Mar, nearest to 1854 Seaview Avenue, City of Del Mar |
| 811158 | 1.1 | Category 3 | 50 | 11/15/2014 23:30 | 2719 Camino del Mar |
| 805229 | 1.1 | Category 3 | 100 | 4/4/2014 9:35 | Manhole B7-41 near 1309 Luneta Drive, Del Mar, CA 92014 |
| 798226 | 1.1 | Category 3 | 525 | 8/26/2013 17:45 | 535 Serpentine Drive |

II. FINDINGS

A. Notes

1. According to Discharger (AD) the Sanitary Sewer Management Plan (SSMP) in CIWQS (Dated 8/2016) is the most current one.
2. AD (Closed Circuit Television) CCTV of the whole system was conducted in 2014 and is scheduled to be done every 5 years. Discharger conducts localized CCTV as needed in the interim. Contractor scrubs and videos force main every 2 years.
3. AD SSO complaint was received from a civilian, not specifying sewage, and dispatched at 11:00.
4. AD SSO site was a low risk area, not usually prone to (root/wipes) blockages. As such it was on an annual cleaning schedule and approximately due for maintenance. High risk areas are scheduled for cleaning quarterly. Risk assignment is based on combination of video feeds and maintenance records. Additional cleanings may be done based on resident complaints.
5. AD County Health Department had been notified immediately by lifeguards (J. Edelbrock), and beach closure postings were done shortly thereafter in accordance with County's instructions.
6. Discharger notes significant CIP investments in infrastructure in the past 28 years and notes a corresponding reduction in frequency of SSOs.
7. After meeting with Discharger, SDWB inspectors visited SSO site. Noted that MH-B9-07 was not properly seated, allowing for inflow and infiltration.

B. Areas of Concern

1. 10" vitrified clay pipe (VCP) in SSO area is 58 years old. Depending on the condition of this pipe, Discharger should be considering serviceable life terms.
2. Certified spill report contained inaccurate calculation of gallons spilled (based on 11:30 start time, not 11:00) and did not report that water quality samples were collected (or results of sampling). (see I.1 of 2006-0003-DWQ)
3. Although not a permit requirement, Discharger should have sampled beach water quality as soon as possible after addressing the SSO. This would have resulted in a better understanding of human health risk from this SSO and more accurate beach closure information. Discharger should establish sampling protocol with County Health in case of future SSO.

C. Violations

1. Unauthorized sewage discharge on 10/14/2018 (Violating the Clean Water Act and Prohibition C.1 of 2006-0003-DWQ)
2. Discharger did not timely notify OES or the Water Board in accordance with C.2 of R9-2007-0005 and G.4 of 2006-0003-DWQ and the monitoring and reporting requirements.
3. Discharger did not have its SSMP available on site per Provision 11 and E.1 of 2006-0003-DWQ.

III. RECOMMENDATIONS AND ADDITIONAL COMMENTS, ITEMS TO FOLLOW-UP FOR FUTURE INSPECTIONS, NOTES, ETC.

A. Follow up actions

1. Discharger to provide records of prior cleanings (dates and any observations) at the SSO area to confirm maintenance schedule.
2. Discharger to provide records of CCTV findings (and date of CCTV) in SSO area to confirm pipe condition.
3. Discharger to respond to if/when the SSO area (VCP) is scheduled for replacement, in accordance with SSMP.
4. Discharger to revise final spill report to indicate gallons discharged based on 11:00 notification, and that samples had been collected.
5. San Diego Water Board to provide link to reporting flow chart.

IV. SIGNATURE SECTION

Chiara Clemente



11/7/18

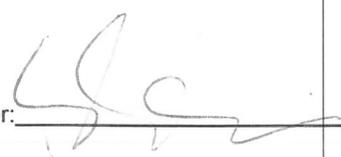
STAFF INSPECTOR

SIGNATURE

INSPECTION DATE

V. (For internal use only)

Violation #s:
Regulatory Measure:



Reviewed by Supervisor:

Date 11/13/18

cc:

Inter-office Referral: 1) _____ 2) _____ 3) _____ 4) _____ 5) _____

Exhibit 2 - Liability Methodology

Abbreviations used in Settlement Offer

| | |
|-------|--------------------------------|
| ACL | Administrative Civil Liability |
| CCTV | Closed Circuit Television |
| REC-1 | Contact Recreation |
| REC-2 | Non-contact Recreation |
| SSMP | Sanitary Sewer Management Plan |
| SSO | Sanitary Sewer Overflow |
| CWC | California Water Code |

Alleged Violation No. 1: unauthorized discharge of untreated sewage to waters of the United States

The discharge of untreated sewage is a violation of Prohibition C.1 of State Water Board Order No. 2006-003-DWQ, which prohibits the discharge of untreated or partially treated wastewater to waters of the United States and Prohibition C.2 which prohibits the discharge of untreated or partially treated wastewater that creates a nuisance, as defined in CWC section 13050(m). This unauthorized discharge to waters of the United States also violates the federal Clean Water Act section 301 (33 U.S.C. 1311). The discharge of raw sewage is also a violation of San Diego Water Board Order No. R9-2007-0005, CWC section 13376, and the Water Quality Control Plan for the San Diego Basin (9) Waste Discharge Prohibitions Nos. 1 and 9. The City is therefore subject to administrative liability pursuant to CWC section 13385, subdivision (a)(1) and (a)(5).

On October 15, 2018, the City of Del Mar (City) reported an unauthorized discharge of untreated sewage to the Pacific Ocean, a traditionally navigable water of the United States, which occurred on October 14, 2018 (CIWQS Spill ID # 851738).

| PENALTY FACTOR | VALUE | DISCUSSION |
|---|-----------------|---|
| Degree of Toxicity | 3 | Sewage poses an above moderate risk and direct threat to potential receptors. The chemical, physical and biological characteristics of raw sewage exceed known risk factors and limits for constituents including fecal indicator bacteria, nutrients, turbidity, dissolved oxygen, and total or suspended solids. |
| Harm to Beneficial Uses | 4 | The SSO poses an above moderate harm to contact and non-contact recreational beneficial uses. Temporary restrictions (i.e. beach closures) were in place from 10/14/18 to 10/17/18. The spill occurred on a weekend, at and near a sandy beach open to the public, that is a recreation area for surfers and beachgoers. Therefore the violations affected the key use of recreation, in an area of special importance for that key use. |
| Susceptibility to Cleanup or Abatement | 0 | The total discharge was 10,500 gallons. The City was able to recover 6,250 gallons. Therefore more than 50% of the discharge was recoverable. |
| Final Score: Potential for Harm | 7 | |
| Per Gallon and Per Day Factor for Discharge Violations | 0.41 | The "Deviation from Requirement" is major because the discharge of raw sewage is expressly prohibited in the Clean Water Act, California Water Code, and two Waste Discharge Requirement (WDR) permits. Therefore, according to Table 1 and Table 2 of the 2017 Enforcement Policy, using 7 as a potential for harm and major deviation from requirements, the Per Gallon and Per Day Factors both equal 0.41. |
| Volume Discharged | 3,250 | According to the City's calculations 4,250 gallons of sewage were not recovered. Per CWC section 13385(c)(2), the maximum penalty is \$10 per gallon discharged but not cleaned up, which exceeded 1,000 gallons. |
| Adjustment for High Volume Discharges | n/a | The discharge does not qualify as a high volume discharge. |
| Days of Discharge | 1 | The discharge occurred on one day (10/14/18). According to CWC 13385(c)(1) the maximum penalty is \$10,000 for each day the violation occurred. |
| Initial Liability for Alleged Violation No. 1 | \$17,425 | The initial liability is calculated as follows: (per gallon factor) (gallons discharged-1000) (maximum liability) + (per day factor) (days violated) (maximum liability) = (0.41)(3,250)(10) + (0.41)(1)(10,000) = 13,325 + 4,100 = 17,425 |
| Degree of Culpability | 1.5 | A prevailing industry practice to minimize or prevent SSOs is to perform inspections, maintenance, and improvements in accordance with the schedule specified in each discharger's SSMP. According to the City's records, the SSO site was not inspected or maintained in accordance with the frequencies specified in its SSMP. The last CCTV inspection performed was October 2015, and the last record of maintenance at the SSO site was February 2016. The October 2015 inspection indicated that the 58-year old pipe segment should be replaced. |
| History of Violations | 1.1 | The City has reported 1 Category 1 SSO (alleged herein) and two Category 2 SSOs in the past 5 years, totaling 138,250 gallons. The (normalized) spill rate and volume are less than the regional and state average. |
| Cleanup and Cooperation | 1.5 | The City has made no commitments to bring its inspection or maintenance schedule into conformance with the frequencies specified in its current SSMP, and has provided no schedule for the implementation of recommended repairs listed in the 2015 contracted inspection report. The City has expressed interest in re-evaluating the frequencies listed in its SSMP. |
| Total Base Liability for Alleged Violation No. 1 | \$43,127 | The total base liability is calculated as the initial liability multiplied by the culpability, history of violation, and cleanup and cooperation factors. |
| Final Liability for Alleged Violation No. 1 | \$42,500 | The final liability amount is the total base liability plus any adjustment for the ability to pay, economic benefit, and other factors. The final liability must be more than the minimum liability and less than or equal to the maximum liability. |

**Administrative Civil Liability
Liability Calculation Methodology**

| Allegation of Violation | Civil Liability | | | | |
|---|---|----------|----------|----------|-----------------|
| | Maximum | Minimum | Initial | Base | Final |
| Violation No. 1: Discharge of Untreated Sewage to waters of the United States | \$42,500 | \$12,788 | \$17,425 | \$43,127 | \$42,500 |
| Ability to Pay and Continue in Business: Yes | Based on publicly available information, the Prosecution Team concludes that the Discharger should have the ability to pay the Total Base Liability Amount. | | | | |
| Economic Benefit = \$11,627 | Using costs cited in the 9/2/14 City of Del Mar Staff Report titled "Overview of Proposed Wastewater Rates" and the USEPA's BEN model, the avoided cost of maintenance on the segment of pipe where the SSO occurred is approximately \$11,627 . This number does not include avoided costs for any deferred maintenance throughout the City's collection system, or the cost of pipe replacement. | | | | |
| Other Factors: Reimbursement of Staff Costs = \$1,536 | Staff costs incurred to 12/7/2018, including indirect costs, total \$1,536. However, staff costs have not been added to the final civil liability amount. \$0 | | | | |
| Minimum Civil Liability = \$12,788 | Per the Enforcement Policy the minimum civil liability should equal Economic Benefit, plus 10% so that liabilities are not perceived as the "cost of doing business." Using an economic benefit estimate of \$11,627, and adding 10% the minimum civil liability is \$12,788 . The final liability for all of the alleged violations is greater than the minimum civil liability. | | | | |
| Maximum Civil Liability = \$42,500 | The maximum civil liability was calculated pursuant to WC section 13385. The final liability for all of the alleged violations has been reduced to the maximum civil liability. | | | | |
| Total Final Civil Liability : | | | | | \$42,500 |

Economic Benefit Analysis

10/14/18 Del Mar SSO

| Compliance Action | Capital Investment | | One-Time Non-Depreciable Expenditure | | Annual Cost | | Non-Compliance Date | Compliance Date | Penalty Payment Date | Discount Rate | Benefit of Non-Compliance |
|----------------------------------|--------------------|-------|--------------------------------------|----------|-------------|-------|---------------------|-----------------|----------------------|---------------|---------------------------|
| | Amount | Basis | Date | Delayed? | Amount | Basis | | | | | |
| insp./maint. Of SSO pipe segment | \$ - | ECI | 1/1/2015 | Y | \$ - | ECI | 9/2/2014 | 10/15/2018 | 1/30/2019 | 3.70% | 11,627 |
| 2 | \$ - | ECI | 1/1/2015 | Y | \$ - | ECI | 1/1/2015 | 10/15/2018 | 1/30/2019 | 3.60% | - |
| 3 | \$ - | ECI | 1/1/2015 | Y | \$ - | ECI | 1/1/2015 | 10/15/2018 | 1/30/2019 | 3.60% | - |
| 4 | \$ - | ECI | 1/1/2015 | Y | \$ - | ECI | 1/1/2015 | 10/15/2018 | 1/30/2019 | 3.60% | - |
| 5 | \$ - | ECI | 1/1/2015 | Y | \$ - | ECI | 1/1/2015 | 10/15/2018 | 1/30/2019 | 3.60% | - |
| 6 | \$ - | ECI | 1/1/2015 | Y | \$ - | ECI | 1/1/2015 | 10/15/2018 | 1/30/2019 | 3.60% | - |
| 7 | \$ - | ECI | 1/1/2015 | Y | \$ - | ECI | 1/1/2015 | 10/15/2018 | 1/30/2019 | 3.60% | - |
| 8 | \$ - | ECI | 1/1/2015 | Y | \$ - | ECI | 1/1/2015 | 10/15/2018 | 1/30/2019 | 3.60% | - |
| 9 | \$ - | ECI | 1/1/2015 | Y | \$ - | ECI | 1/1/2015 | 10/15/2018 | 1/30/2019 | 3.60% | - |
| 10 | \$ - | ECI | 1/1/2015 | Y | \$ - | ECI | 1/1/2015 | 10/15/2018 | 1/30/2019 | 3.60% | - |
| 11 | \$ - | ECI | 1/1/2015 | Y | \$ - | ECI | 1/1/2015 | 10/15/2018 | 1/30/2019 | 3.60% | - |
| 12 | \$ - | ECI | 1/1/2015 | Y | \$ - | ECI | 1/1/2015 | 10/15/2018 | 1/30/2019 | 3.60% | - |
| 13 | \$ - | ECI | 1/1/2015 | Y | \$ - | ECI | 1/1/2015 | 10/15/2018 | 1/30/2019 | 3.60% | - |
| 14 | \$ - | ECI | 1/1/2015 | Y | \$ - | ECI | 1/1/2015 | 10/15/2018 | 1/30/2019 | 3.60% | - |
| 15 | \$ - | ECI | 1/1/2015 | Y | \$ - | ECI | 1/1/2015 | 10/15/2018 | 1/30/2019 | 3.60% | - |

Total Benefit: \$ 11,627

Income Tax Schedule: Municipality
 USEPA BEN Model Version: Version 5.8.0 (April 2018)
 Analyst: Chiara Clemente
 Date/Time of Analysis: #####

Assumptions:

2.4 million annual operating costs, excluding \$800,000 for disposal and CIPs
 28.8 miles of sewage lines to maintain
 pro-rated to 389 linear feet of SSO pipe segment in question
 Numbers were referenced from a City of Del Mar Staff Report titled "Wastewater Rate Review Introduction and Overview" provided to Council on 9/2/14