
San Diego Regional Water Quality Control Board

June 3, 2025

Sent by Email Only

**In reply refer to: CW-
631623:CClemente**

Mr. Samir Nuhaily
Deputy Director
Department of Public Works,
Wastewater Management
San Diego County Sanitation District,
County of San Diego, Land Use and Environment Group
5510 Overland Avenue, Suite 358
San Diego, CA 92123
SamirM.Nuhaily@sdcounty.ca.gov

**SUBJECT: OFFER NO. R9-2025-0102 TO SETTLE ADMINISTRATIVE CIVIL
LIABILITY FOR JANUARY 22, 2024 SANITARY SEWER SPILL TO SWEETWATER
RESERVOIR, SPILL ID 892279, WDID 9SSO10662**

Samir Nuhaily,

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 11,025 gallons of untreated sewage to the Sweetwater Reservoir on January 22, 2024. The San Diego County Sanitation District (District) allegedly violated multiple provisions of the Clean Water Act, Porter-Cologne Water Quality Control Act, and relevant state and regional waste discharge requirements as a result of this spill.

This Settlement Offer provides the District with an opportunity to resolve the alleged violations through payment of eighty-eight thousand, two hundred dollars (\$88,200). Please read this letter carefully and respond no later than July 3, 2025. Please include the completed *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver; Exhibit A)* in the District's response.

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 *Penalty Calculation Methodology* (Exhibit B).

- Prohibition 4.2 of State Water Resources Control Board Order WQ 2022-0103-DWQ, *Statewide Waste Discharge Requirements General Order for Sanitary Sewer Systems* ([Statewide General Order](#))¹
- Prohibition B.1 of San Diego Water Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Sanitary Sewer Agencies in the San Diego Region* ([Regional General Order](#))²
- Clean Water Act section 301 and/or California Water Code (Water Code) section 13376
- Prohibition 1 and Prohibition 9 of the Water Quality Control Plan for the San Diego Basin

For the purposes of calculating an appropriate administrative civil liability, the Prosecution Team exercised discretion to allege the multiple violations as a single violation because a single act (sewage spill) lead to violations of similar requirements in different permits or plans, but the requirements are designed to address the same water quality issue.³

Statutory Liability

The unauthorized discharge of sewage in violation of Statewide General Order Prohibition 4.2 is subject to administrative civil liability pursuant to Water Code section 13350. Water Code section 13350(e) authorizes the San Diego Water Board to impose an administrative civil liability up to \$10 for each gallon of waste discharged to waters of the State.

Water Code section 13327 requires the San Diego Water Board to consider several factors in determining the amount of administrative civil liability, such as the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is

¹ The Statewide General Order is available at:
https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2022/wqo_2022-0103-dwq.pdf.

² The Regional General Order is available at:
https://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2007/R9-2007-0005_ADA.pdf.

³ See 2017 Enforcement Policy, Section VI.A, Step 4 and 2024 Enforcement Policy, Section II.E, Multiple Violations Resulting from the Same Incident.

susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. The State Water Board's Enforcement Policy⁴ incorporates these statutory factors in a methodology for determining an administrative civil liability in instances of noncompliance. The enclosed *Penalty Calculation Methodology* (Exhibit B) describes the methodology and factors used by the Prosecution Team to calculate the administrative civil liability for the alleged violation.

Proposed Settlement Offer

The Prosecution Team proposes to resolve the violations with this Settlement Offer of \$88,200. This Settlement Offer was determined based on an assessment of the factors set forth in Water Code section 13327 using the penalty methodology set forth in the Enforcement Policy (see Exhibit B). 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 District 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, either through issuance of a formal administrative civil liability complaint or by referring the matter to the Attorney General's Office. The Prosecution Team also reserves the right to conduct additional investigation, including issuance of investigation orders and/or subpoenas to determine whether additional violations occurred. Any additional violations subjecting the District to liability may be included in a formal enforcement action. The District can avoid the risks inherent in a formal enforcement action and settle the alleged violation by accepting this Settlement Offer. Please note that the Settlement Offer does not cover liability for any violation that is not specifically identified in the attached *Penalty Calculation Methodology*. However, the District's acceptance of this Settlement Offer will result in a complete and final resolution of all potential claims the San Diego Water Board may have related to the violation described in the attached *Penalty Calculation Methodology*. The Prosecution Team reserves the right to take further enforcement actions against the District for all

⁴ As described in the attached *Penalty Calculation Methodology* (Exhibit B), the violation occurred prior to the effective date of the [2024 Enforcement Policy](#), therefore, liability was calculated based on the [2017 Enforcement Policy](#). However, the 2024 Enforcement Policy was used to the extent it provides clarifications or procedural changes. For more information, please refer to Appendix D of the [2024 Enforcement Policy](#).

past violations not identified in this Settlement Offer and future violations of the Water Code or subsequently adopted orders.

Options for Responding to the Settlement Offer

Option A: Accept the Offer and Pay the Full Amount

If the District chooses to accept this Settlement Offer, then the enclosed *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver, Exhibit A)* shall be completed and submitted no later than **July 3, 2025** by email to sandiego@waterboards.ca.gov with “**CW-631623:CClemente**” included in the subject line.

- In lieu of paying the full administrative civil liability amount to the Waste Discharge Permit Fund, the District may elect to apply a portion of the total liability to fund a supplemental environmental project administered by a third party. In accordance with [State Board Resolution 2021-0015](#),⁵ the District can direct up to \$44,100 to Southern California Coastal Water Research Project (SCCWRP) for a SEP that supplements the Stormwater Monitoring Coalition Regional Monitoring Program (SMC RMP) work that would not otherwise be funded by the SMC RMP’s existing workplan(s). The [SMC RMP](#)⁶ collects data annually on water quality, physical habitat and riparian conditions, and biological communities from streams in 17 coastal watersheds to answer questions such as “What is the extent and magnitude of impact in Southern California’s streams?” and “How is this changing over time?” No funds allocated to the SEP will go to the Water Boards, and the District’s obligation to complete the SEP is released upon proof of payment to SCCWRP. The remaining liability amount must be paid to the Waste Discharge Permit Fund.
- If the District accepts the offer but elects not to fund the SMC RMP SEP, it must pay the total administrative civil liability amount to the Waste Discharge Permit Fund.

Both options are represented in the enclosed *Acceptance and Waiver* (Exhibit A).

Option B: Contest the Alleged Violations

⁵ The Resolution can be accessed at:

https://www.waterboards.ca.gov/sandiego/water_issues/programs/compliance/docs/swrcb_2021_0015.pdf

⁶ Information regarding the SMC RMP can be accessed at:

<https://www.sccwrp.org/about/research-areas/regional-monitoring/southern-california-stormwater-monitoring-coalition/>

If the District wishes to contest the violations or the methodology used to calculate the proposed liability, it must submit a written response identifying the basis for the challenge, including any evidence to support its claims. The District's response must be received by the San Diego Water Board no later than **July 3, 2025**. The Prosecution Team will evaluate the District's basis for a challenge and may seek clarifying information or schedule an in-person meeting. The Prosecution Team will inform the District whether a reduction in the settlement amount is warranted, or whether the original settlement amount is appropriate. The Prosecution Team will provide the District a final opportunity to accept the revised/original settlement amount before proceeding with formal enforcement.

Option C: Reject Offer

If the District chooses to reject this Settlement Offer and/or does not complete and return the enclosed *Acceptance and Waiver* by **July 3, 2025**, it should expect that the Prosecution Team will conduct further investigation of the violations, issue an administrative civil liability complaint, and schedule a hearing before the Board or its delegate. Should the District not accept this Settlement Offer, the Prosecution Team reserves the right to issue a formal complaint alleging additional violations and/or using revised penalty calculation factors, including the recovery of staff costs. The District will receive notice of any deadlines associated with that action. As previously stated, in such an action, the liability amount sought will likely exceed the liability amount set forth in this Settlement Offer.

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 comments are received within the 30 days that warrant revocation of the Settlement Offer, 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 District requiring payment of the **\$88,200** administrative civil liability within 30 days from when the Settlement Offer is signed by the Executive Officer.

If, however, comments are received in opposition to this settlement that reasonably affects the propriety of presenting this Settlement Offer to the Executive Officer or if the Executive Officer declines to accept the settlement, then the Settlement Offer may be withdrawn. In this case, the District will be notified and its waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violations will most likely be addressed through a formal enforcement action. An administrative civil liability complaint may be issued and the matter may be set for a hearing.

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,

Original Signed by Kelly Dorsey on June 3, 2025

Kelly Dorsey, P.G.
Assistant Executive Officer
San Diego Water Board

Enclosures:

- Exhibit A: Acceptance of Settlement Offer and Waiver of Right to a Hearing
- Exhibit B: Penalty Calculation Methodology

cc via email only:

Kelly Dorsey, San Diego Water Board, Kelly.Dorsey@waterboards.ca.gov
Chiara Clemente, San Diego Water Board, Chiara.Clemente@waterboards.ca.gov
Christina Arias, San Diego Water Board, Christina.Arias@waterboards.ca.gov
Joann Lim, San Diego Water Board, Joann.Lim@waterboards.ca.gov
David Boyers, State Water Board Office of Enforcement,
David.Boyers@waterboards.ca.gov
Anthony Hooper, San Diego County Sanitation District,
Anthony.Hooper@sdcounty.ca.gov

Order No.	R9-2025-0102
CW Place ID	631623
CW Party/Organization ID	11763
CW Party/Person ID	647860
CW Regulatory Measure (Enrollment)	300520
WDID	9SSO10662

CW – California Integrated Water Quality System (CIWQS); ID – identifier; WDID – Waste Discharge Identification

EXHIBIT A

ACCEPTANCE OF SETTLEMENT OFFER AND WAIVER OF RIGHT TO A HEARING FOR SETTLEMENT OFFER NO. R9-2025-0102; SAN DIEGO COUNTY SANITATION DISTRICT, COUNTY OF SAN DIEGO

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 San Diego County Sanitation District (District) hereby accepts the Settlement Offer described in the letter titled *OFFER NO. R9-2025-0102 TO SETTLE ADMINISTRATIVE CIVIL LIABILITY FOR JANUARY 22, 2024 SANITARY SEWER SPILL TO SWEETWATER RESERVOIR, SPILL ID 892279, WDID 9SSO10662*, and 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 District 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 District understands that by signing this *Acceptance and Waiver*, it has waived its right to contest the allegations in the Settlement Offer and the civil liability amount for the alleged violations. The District 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 District, the *Acceptance and Waiver* shall be submitted by email to sandiego@waterboards.ca.gov with “**CW-631623:CClemente**” included in the subject line.

The District 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 (by delegated authority of the San Diego Water Board), will be published as required by law for public comment.

If no comments are received within the notice period, or the comments received do not 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 District 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 District will be notified and the District's waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violations 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 District further understands that, in lieu of full payment of the assessed administrative civil liability to the Waste Discharge Permit Fund, a portion of the penalty payment may be made by the District toward a supplemental environment project (SEP). The SEP option available to the District is the Stormwater Monitoring Coalition Regional Monitoring Program (SMC RMP) SEP Fund, which supplements SMC RMP studies that would not otherwise be conducted through the SMC RMP's existing cost allocations.

The District understands that once this *Acceptance and Waiver* is formally endorsed, then the full payment is a condition of this *Acceptance and Waiver*. In accordance with Water Code section 13323, full payment shall be made no later than 30 days from the date on which the order is issued. The District shall pay the assessed civil liability to the Waste Discharge Permit Fund and/or the Southern California Coastal Water Research Project (SCCWRP, for the SMC RMP SEP Fund) in accordance with the payment option selected below.

The District agrees to pay the amounts indicated below to the Waste Discharge Permit Fund and, if the applicable payment option is selected, the SMC RMP SEP Fund, in accordance with the Payment Instructions below. The District understands that the San Diego Water Board will consider the District to have fulfilled its SEP obligation when SCCWRP receives the District's contribution to the SEP Fund.

Payment Instructions

Only to be completed if this Acceptance Waiver is executed by the San Diego Water Board, or its delegate.

SCCWRP SMC RMP SEP Fund

Payments must be made to SCCWRP and made out to the "Southern California Coastal Water Research Project" with the Settlement Offer Number (R9-2025-0102) written on the check. Payment must be mailed to the following address:

SCCWRP
Attn: SMC RMP SEP Funds
3535 Harbor Blvd., Suite 110
Costa Mesa, CA 92626

Waste Discharge Permit Fund

Payments must be mailed to the State Water Resources Control Board and made payable to the "Waste Discharge Permit Fund" with the Settlement Offer Number (R9-2025-0102) written on the check. Payment must be mailed to the following address:

State Water Resources Control Board, Accounting Office,
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

Verification of Payment

For tracking purposes, a copy of any issued checks must also be provided to the San Diego Water Board via email to SanDiego@waterboards.ca.gov, attention "CW-631623:CClemente", or by mail to:

San Diego Water Board
Attn: CW-631623:CClemente
2375 Northside Drive, Suite 100,
San Diego, CA 92108

Payment Options:

Mark **one** of the "Option" boxes below and fill in the blank fields as appropriate. Electing to pay all or a portion of the assessed liability to the SMC RMP SEP Fund will not change the total amount to be paid.

Option 1: Pay a portion of the assessed liability to the SMC RMP SEP Fund:

Amount to be paid to the SMC RMP SEP Fund (cannot exceed \$44,100)

\$

Amount to be paid to the Waste Discharge Permit Fund (\$88,200 minus amount inserted above)

\$

\$88,200 - Total assessed administrative civil liability (sum of amounts above).

Or

Option 2: Pay the total assessed administrative civil liability (\$88,200) to the Waste Discharge Permit Fund.

SETTLEMENT OFFER NO. R9-2025-0102 EXHIBIT A SIGNATURE PAGE

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

SAN DIEGO COUNTY SANITATION DISTRICT

By: **Original Signed by Samir Nuhaily on July 2, 2025** _____
Signed Name Date

Printed or Typed Name Title

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13323 AND
GOVERNMENT SECTION 11415.60 ON BEHALF OF THE CALIFORNIA REGIONAL
WATER QUALITY CONTROL BOARD, SAN DIEGO REGION

By: **Original Signed by David W. Gibson on October 2, 2025** _____
DAVID W. GIBSON Date
Executive Officer

EXHIBIT B

PENALTY CALCULATION METHODOLOGY FOR SAN DIEGO COUNTY SANITATION DISTRICT JANUARY 22, 2024 SANITARY SEWER SPILL TO SWEETWATER RESERVOIR, SPILL ID 892279, WDID 9SSO10662

On December 5, 2023 and August 20, 2024, the State Water Resources Control Board (State Water Board) adopted Resolution Nos. 2023-0043 and 2024-0027, which adopted the 2024 Water Quality Enforcement Policy ([2024 Enforcement Policy](#)).⁷ The 2024 Enforcement Policy was approved by the Office of Administrative Law and become effective on November 7, 2024. The San Diego Regional Water Quality Control Board (San Diego Water Board) Prosecution Team (Prosecution Team) developed the administrative civil liability based on the [2017 Enforcement Policy](#)⁸ since the alleged violation occurred prior to the effective date of the 2024 Enforcement Policy. However, the 2024 Enforcement Policy was used to the extent it provides clarifications or procedural changes to the 2017 Enforcement Policy. (See 2024 Enforcement Policy, Appendix D.)

The enforcement policies establish a ten-step methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code (Water Code) sections 13327. The tables below summarize the facts supporting how each factor of the ten-step approach was applied to the alleged violation, providing the basis for assessing the corresponding score.

Alleged Violation – Discharge of Untreated Sewage to Surface Waters

The alleged violation is for the discharge of untreated sewage to surface waters by the San Diego County Sanitation District (District). On January 22, 2024, San Diego County experienced a record-breaking⁹ storm event that resulted in over four inches of rainfall in less than 12 hours,¹⁰ which falls within the 90% confidence intervals of a 100 to 1000-

⁷ The 2024 Enforcement Policy is available at:

https://waterboards.ca.gov/water_issues/programs/enforcement/docs/2024/2024-enforcement-policy.pdf.

⁸ The 2017 Enforcement Policy, which was in effect at the time of the alleged violation, is available at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

⁹ For more information, please see: <https://www.sandiegouniontribune.com/2024/01/23/heres-how-much-rain-fell-around-san-diego-county-and-which-8-cities-broke-records/>

¹⁰ Precipitation information obtained from the San Diego County Flood Control District (Sensor ID 27085): https://sandiego.onerain.com/site/?site_id=15&site=91047666-b9ea-48a7-bb25-f3d0b974a428

year storm event.¹¹ During this storm, precipitation inflow from the storm overwhelmed the District's sewer system capacity at the siphon located at Jamacha Boulevard. At 11:45 am, untreated sewage was discovered exiting the manhole upstream of the siphon. An estimated 11,025 gallons of sewage travelled to a curb inlet and into a tributary to Sweetwater Reservoir.¹² An unlined infiltration basin is located at the base of this tributary, just prior to reaching the reservoir. During a compliance evaluation audit of the collection system on October 24, 2024,¹³ the District explained to San Diego Water Board staff that Sweetwater Authority (SWA), which manages the Sweetwater Reservoir, had opened the valve of the infiltration basin to let flows into the reservoir, likely to avoid catastrophic flooding. The District confirmed that 11,025 gallons of untreated sewage from the spill at Jamacha Boulevard eventually reached the Sweetwater Reservoir (Sweetwater Spill).¹⁴

The District was in contact with SWA when the sewage spill was discovered.¹⁵ At 12:27 pm, SWA stopped drafting from the reservoir intake. The SWA then notified the State Water Board Department of Drinking Water (DDW) of the spill and collected bacteriological samples from the treatment plant intake from the reservoir.¹⁶ Under direction from DDW, SWA collected samples daily at multiple locations within the reservoir from January 23, 2024 to January 30, 2024 while the intake was stopped. On January 30, 2024, DDW notified SWA that use of the reservoir intake could resume based on the observed decrease in bacteria concentrations.

The District is required to maintain and operate its sanitary sewer system in compliance with the following permits:

- State Water Resources Control Board Order WQ 2022-0103-DWQ, *Statewide Waste Discharge Requirements General Order for Sanitary Sewer Systems* ([Statewide General Order](#)),¹⁷ and
- San Diego Water Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Sanitary Sewer Agencies in the San Diego Region* ([Regional General Order](#)).¹⁸

¹¹ Based on the National Oceanic and Atmospheric Administration Precipitation Frequency Estimates for the Sweetwater Reservoir (Site ID 92-3300):

https://hdsc.nws.noaa.gov/pfds/pfds_map_cont.html?bkmrk=ca

¹² See Table 3, Item 2

¹³ See Table 3, Item 4

¹⁴ See Table 3, Item 3

¹⁵ See Table 3, Item 5

¹⁶ See Table 3, Item 6

¹⁷ The Statewide General Order is available at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2022/wqo_2022-0103-dwq.pdf

¹⁸ The Regional General Order is available at:

Prohibition 4.2 of the Statewide General Order states that “Any discharge from a sanitary sewer system, discharged directly or indirectly through a drainage conveyance system or other route, to waters of the State is prohibited.” Prohibition B.1 of the Regional General Order states that “[t]he discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant is prohibited.”

The District’s discharge of untreated sewage on January 22, 2024, was in violation of Statewide General Order Prohibition 4.2, Regional General Order Prohibition B.1, and Clean Water Act section 301 and/or Water Code section 13376 which prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System permit. The discharge was also in violation of the Water Quality Control Plan for the San Diego Basin Waste Discharge Prohibition No. 1 which states “[t]he discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination, or nuisance as defined in Water Code section 13050, is prohibited” and Waste Discharge Prohibition No. 9, which states “[t]he unauthorized discharge of treated or untreated sewage to waters of the state or to a storm water conveyance system is prohibited.”

For the purpose of calculating an appropriate administrative civil liability, the Prosecution Team exercised discretion to allege the multiple violations as a single violation because a single act (sewage spill) lead to violations of similar requirements in different permits or plans, and the requirements are designed to address the same water quality issue.¹⁹

Table 1. Penalty Calculation for the Discharge of Untreated Sewage to Surface Waters

PENALTY FACTOR	VALUE	DISCUSSION
Degree of Toxicity of the Discharge	3 (above moderate)	The unauthorized discharge of untreated sewage represents an “above moderate” risk level because untreated sewage contains high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants known to exceed existing water quality standards. These pollutants exert varying levels of impacts to beneficial uses of the

https://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2007/R9-2007-0005_ADA.pdf.

¹⁹ See 2017 Enforcement Policy, Section VI.A, Step 4 and 2024 Enforcement Policy, Section II.E, Multiple Violations Resulting from the Same Incident.

Table 1. Penalty Calculation for the Discharge of Untreated Sewage to Surface Waters (cont.)

PENALTY FACTOR	VALUE	DISCUSSION
		receiving waters. The high degree of toxicity in untreated sewage poses a direct threat to human and ecological receptors.
Actual Harm or Potential Harm to Beneficial Uses	5 (major)	The Sweetwater Reservoir is a drinking water reservoir, a key area for the municipal beneficial use (MUN), and a priority for the San Diego Water Board.²⁰ In addition, Sweetwater Reservoir supports several other beneficial uses that are negatively impacted by sewage discharges, including: contact water recreation (REC-1),²¹ non-contact water recreation (REC-2), warm freshwater habitat (WARM) and wildlife habitat (WILD). The Sweetwater Reservoir is listed on the California 2020-2022 Integrated Report as impaired for dissolved oxygen and mercury.²² On January 22, 2024, the discharge of untreated sewage to Sweetwater Reservoir prompted SWA to suspend use of the reservoir immediately. SWA collected bacteria samples throughout the reservoir and communicated with staff at DDW daily. Due to elevated bacteria concentrations, and under direction from DDW, SWA did not resume drafting from the reservoir until January 30, 2024. While a biological assessment was not performed following the spill,²³ elevated bacteria concentrations

²⁰ In accordance with R9-2017-0030, *Resolution Supporting Use of the Key Beneficial Uses / Key Areas Concept to Help the San Diego Water Board Focus on What is Most Important*: https://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2017/R9-2017-0030.pdf

²¹ While swimming in the reservoir is prohibited, recreational fishing is permitted from designated shoreline locations.

²² The California 2020-2022 Integrated Report is available at: https://www.waterboards.ca.gov/water_issues/programs/water_quality_assessment/2020_2022_integrated_report.html.

²³ Under the Statewide General Order, a biological assessment is not required for spills to surface waters that are less than 50,000 gallons.

Table 1. Penalty Calculation for the Discharge of Untreated Sewage to Surface Waters (cont.)

PENALTY FACTOR	VALUE	DISCUSSION
		indicate that impacts to WARM and WILD and REC-2 beneficial uses are possible. For this factor, the Enforcement Policy²⁴ stipulates a score of 5, or “major”, can be typified by observed or reasonably expected potential significant impacts, and involved potential for actual acute and/or chronic (e.g., more than five day) restrictions on, or impairment of, beneficial uses, aquatic life, and/or human health. In this case, the Sweetwater Spill resulted in the closure of the Sweetwater Reservoir for nine days, directly restricting the MUN beneficial use for more than five days. Therefore, a score of 5 is appropriate for this factor.
Susceptibility to Cleanup or Abatement	1	A factor of 1 is assigned if less than 50 percent of the discharge is cleaned up. For this spill, the District did not recover any of the discharge, resulting in a score of 1.
Potential for Harm	9	Sum of the above three values: (Degree of Toxicity) + (Actual or Potential Harm) + (Susceptibility to Cleanup) OR $3 + 5 + 1 = 9$
Deviation from Requirement	major	The deviation from the requirement is major because a spill of untreated sewage to surface waters directly violates the Clean Water Act (Section 301), Water Code section 13376, Water Quality Control Plan for the San Diego Basin, Statewide General Order, and Regional General Order.

²⁴ See Section VI.A, Step 1 of both the 2017 Enforcement Policy and 2024 Enforcement Policy.

Table 1. Penalty Calculation for the Discharge of Untreated Sewage to Surface Waters (cont.)

PENALTY FACTOR	VALUE	DISCUSSION
Per Gallon Factor	0.8	Factor obtained from Table 1 of the Enforcement Policy ²⁵ for discharge violations, using the Potential for Harm and Deviation from Requirement scores.
Volume Discharged	11,025 gallons	The Sweetwater Spill resulted in 11,025 gallons of untreated sewage that reached Sweetwater Reservoir, a water of the State.
Per Gallon Liability	\$88,200	The Per Gallon Liability amount is the product of the Per Gallon Factor, Volume Discharged, and maximum per gallon amount allowed under the Water Code. Water Code section 13350(e) states that the per gallon maximum administrative civil liability is \$10 per gallon of waste discharged to waters of the State. The liability is calculated as follows: (Per Gallon Factor) x (Volume Discharged) x (\$ Per Gallon) OR $(0.8) \times (11,025 \text{ gallons}) \times (\\$10) = \\$88,200$
Initial Base Liability	\$88,200	Per Water Code section 13350(e), the Prosecution Team will pursue administrative civil liability on a per gallon basis. Therefore, the Initial Base Liability is equivalent to the Per Gallon Liability.
<i>Adjustments for Discharger Conduct</i>		
Culpability	1.0	The Prosecution Team finds the District acted as a reasonable and prudent person would have leading up to the spill: As described above, a record-breaking storm occurred on January 22, 2024, and resulted in over four inches of rainfall in less than 24 hours.

²⁵ See Table 1 of both the 2017 Enforcement Policy and 2024 Enforcement Policy.

Table 1. Penalty Calculation for the Discharge of Untreated Sewage to Surface Waters (cont.)

PENALTY FACTOR	VALUE	DISCUSSION
		• The spill occurred because the heavy rainfall overwhelmed the capacity of the collection system due to inflow and infiltration. • Despite similar large storm events that occurred in April 2020 and January 2023, the District had not previously experienced a spill at the siphon on Jamacha Boulevard. • Historically, most of the District’s sanitary sewer spills are not related to capacity constraints during storm events. According to the CIWQS Sanitary Sewer System database, since 2007 approximately 10 percent (12 out of 117) of the District’s reported spills were due to large storm events. Of these 12 spills, six have occurred in the last two years. Based on these findings, it appears the siphon at Jamacha Boulevard was unable to withstand inflow and infiltration from the record-breaking storm event that occurred on January 22, 2024. However, the Prosecution Team did not find evidence that indicated capacity constraints at this location prior to the spill. Therefore, the, Prosecution Team finds the District acted as a reasonable and prudent person would have, and finds a neutral score of 1.0 appropriate for this factor.
History of Violations	1.0	The 2017 Enforcement Policy states a multiplier of 1.1 should be used for any prior history of violations. The 2024 Enforcement Policy more specifically defines “violation” as a stipulated or adjudicated violation of the Water Code, Health and Safety Code, or other environmental protection statute for which the Water Boards have enforcement authority. The 2024 Enforcement Policy further states the updated language used for this factor is a substantive change that can only be applied retroactively (i.e., to violations

Table 1. Penalty Calculation for the Discharge of Untreated Sewage to Surface Waters (cont.)

PENALTY FACTOR	VALUE	DISCUSSION
		that occurred before the effective date of the policy) with consent from the discharger.²⁶ The District does not have previous stipulated or adjudicated violations that have occurred within the last five years. However, the District has reported eight Category 1 Spills in the last five years (January 2019 to January 2024), resulting in 176,569 gallons of untreated sewage spilled and 170,389 gallons of untreated sewage reaching surface waters.²⁷ Under these conditions, use of the 2017 Enforcement Policy methodology would result in a score of 1.1. However, the Prosecution Team has elected to apply the 2024 Enforcement Policy methodology to this factor, as a settlement consideration, resulting in a neutral score of 1.0. Should the District choose not to accept Settlement Offer R9-2025-0102, the Prosecution Team reserves the right to revise the score for this factor.
Cleanup and Cooperation	1.0	The Prosecution Team finds the District's response to the Sweetwater Spill meets the standard of what is reasonably expected based on the circumstances of the spill: • The District promptly notified SWA, and SWA stopped drafting water from the reservoir less than one hour after the spill was discovered. • The District recently contracted a consultant to perform a capacity evaluation using hydraulic modelling, which included an assessment of the January 22, 2024 Sweetwater Spill.²⁸

²⁶ See Appendix D of the 2024 Enforcement Policy.

²⁷ The CIWQS Sanitary Sewer System Spill Reports can be accessed at: https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/PublicReportSSOServlet?reportAction=criteria&reportId=sso_main

²⁸ See Table 3, Item 5

Table 1. Penalty Calculation for the Discharge of Untreated Sewage to Surface Waters (cont.)

PENALTY FACTOR	VALUE	DISCUSSION
		The District is also participating in an inflow and infiltration study in coordination with the San Diego Metro Sewer System to identify areas at high-risk during rain events. Based on these findings, the Prosecution Team finds a score of 1.0 appropriate for this factor.
Total Base Liability Amount	\$88,200	Product of initial liability and penalty adjustment factors: (Initial Base Liability) x (Culpability) x (History of Violations) x (Cleanup and Cooperation) OR $(\\$88,200) \times (1.0) \times (1.0) \times (1.0) = \\$88,200$

The Enforcement Policy states that five other factors must be considered before obtaining the final liability amount. These factors are described in Table 2.

Table 2. Other Factor Considerations

Economic Benefit	\$20	The economic benefit is the avoided cost to treat the sewage that was discharged to surface waters. The District sends nearly all of its sewage to the City of San Diego Point Loma Wastewater Treatment Plant. Based on treatment cost estimates provided by the City of San Diego in 2020 ²⁹ and using the United States Environmental Protection Agency (USEPA) economic benefit model, BEN 2024.0.0., ³⁰ the District gained an estimated economic benefit of \$20 with the avoided cost of treating 11,025 gallons of sewage that was ultimately discharged to the Sweetwater Reservoir.
Other Factors as Justice May Require	Did not include staff costs	The Enforcement Policy allows an adjustment to the administrative civil liability in consideration of the costs of investigating and enforcing the matter. As a settlement consideration, the Prosecution Team has elected not to include staff costs to date. If the Settlement Offer is rejected, the Prosecution Team will include, at a minimum, staff investigation and enforcement costs, currently estimated at approximately \$4,500. Staff costs would continue to accrue until an administrative civil liability complaint is issued.
Ability to Pay and Ability to Continue in Business	No adjustment	The District is a public entity with the ability to raise funds. The San Diego Water Board is not aware of, and the District has not provided, any evidence of inability to pay.
Maximum Liability	\$110,250	The maximum liability for the Sweetwater Spill is calculated using statutory maximum limits per Water Code section 13350(e)(2): \$10 per gallon of waste discharged. (\$10) x (11,025 gallons) = \$110,025

²⁹ See Table 3, Item 1

³⁰ See Table 3, Item 7

Table 2. Other Factor Considerations (cont.)

Minimum Liability	\$22	The Enforcement Policy states that the minimum liability is the economic benefit plus 10 percent. Using USEPA's BEN model for calculating economic benefit, the minimum liability considered for this case was based on the avoided costs of not treating the sewage. $(\$20) + [(\$20) \times (0.1)] = \$22$
Final Liability	\$88,200	The Final Liability Amount is the Total Base Liability plus any adjustment for the ability to pay, economic benefit, and other factors. The Total Base Liability falls between the Maximum and Minimum Liability, therefore, the Final Liability Amount is \$88,200.

Table 3. Reference Documents Available Upon Request

Item No.	Document Handle No.	Item	Date
1	8859205	City of San Diego Response to Investigative Order No. R9-2020-0205	9/14/2020
2	11607365	Certified Spill Report for January 22, 2024 Sanitary Sewer Spill, County of San Diego, Spill ID 892279	1/31/2024
3	10638207	Email correspondence with the District confirming January 22, 2024 sanitary sewer spill reached Sweetwater Reservoir	10/28/2024
4	10627653	Compliance Evaluation Report and Notice of Violation No. R9-2024-0204 issued to District following the collection system audit performed on October 24, 2024	12/9/2024
5	11589925	District's email response to additional questions regarding the January 22, 2024 sanitary sewer spill to Sweetwater Reservoir	4/22/2025
6	11607368	Sweetwater Authority's email response to questions regarding the District's January 22, 2024 sanitary sewer spill to Sweetwater Reservoir	4/29/2025
7	11629753	USEPA economic benefit model, BEN 2024.0.0, San Diego County Sanitation District CS	6/2/2025