

**ATTACHMENT A TO SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY
OF ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R9-2025-0124
PENALTY CALCULATION METHODOLOGY**

Water Code section 13327 requires the consideration of several factors in determining administrative civil liability, including the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is 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 [2017 Enforcement Policy](#)¹ and [2024 Enforcement Policy](#) incorporate these factors in a methodology for determining administrative civil liability in instances of noncompliance. The calculated administrative civil liability presented herein is based on the penalty calculation methodology of the 2017 Enforcement Policy, except for clarifications or procedural changes provided by the 2024 Enforcement Policy.²

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.

Violation 1 – Discharge of Untreated Sewage to Surface Waters

The first violation is for the discharge of untreated sewage to surface waters. On November 29, 2023, 152,705 gallons of untreated sewage spilled from a pressurized line near Bluebird Drive to the City of Laguna Beach's (City's) stormwater drainage conveyance system (Bluebird Beach Spill). The spill occurred during a planned repair to remove a corroded ball valve when the City's contractor experienced difficulties in securing the pressurized line, leaving a two-inch opening from which sewage spilled. The spill travelled approximately 500 feet to the Bluebird outfall and resulted in 78,810 gallons of untreated sewage being discharged to the Pacific Ocean at Bluebird Beach. The remaining portion (73,895 gallons) was recovered by collections staff via vacuum trucks and returned to the sanitary sewer collection system.

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

² The 2024 Enforcement Policy became effective on November 7, 2024 and was referenced to the extent it provides clarifications or procedural changes to the 2017 Enforcement Policy. For more information, please refer to Appendix D of the 2024 Enforcement Policy, available at:
https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/2024/2024-enforcement-policy.pdf

Within approximately two hours of the spill start time, the City notified the Orange County Health Care Agency (OCHCA). In response, OCHCA closed three miles of coastline on November 29, 2023. OCHA reduced the closure to one mile on November 30, 2023, once the spill volume was confirmed, and collected water quality samples daily from November 29, 2023, to December 2, 2023. The entire beach closure was lifted on December 2, 2023, after indicator bacteria results met the California Department of Public Health Bacteriological Standards.³

The City is required to maintain and operate its sanitary sewer system in compliance with the following regulatory orders:

- State Water Board Order WQ 2022-0103-DWQ, *Statewide Waste Discharge Requirements General Order for Sanitary Sewer Systems* ([Statewide General Order](#)),⁴ and
- California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region* ([Regional General Order](#)).⁵

Prohibition 4.2 of the Statewide General Order states that “[a]ny 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 City’s discharge of untreated sewage on November 29, 2023, 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 (San Diego Basin Plan) 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

³ See Table 4, Items 5 and 6. Bacteriological Standards for public water-contact sports are listed in the following linked document:

<https://www.cdph.ca.gov/Programs/CEH/DRSEM/CDPH%20Document%20Library/EMB/RecreationalHealth/AB411-SOR.pdf>

⁴ https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2022/wqo_2022-0103-dwq.pdf

⁵ https://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2007/R9-2007-0005_ADA.pdf.

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 resulting from the discharge of untreated sewage as a single violation (Violation 1) 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.⁶ 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.

Table 1. Penalty Calculation for Violation 1- 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 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	3 (moderate)	The untreated sewage entered the Pacific Ocean at Bluebird Beach, within the Laguna Beach State Marine Reserve (SMR), a marine protected area. Beneficial uses of the affected surface waters (Pacific Ocean) include contact and non-contact water recreation, preservation of biological habitats of special significance, wildlife habitat, shellfish harvesting, and rare, threatened or endangered species. In accordance

⁶ See Section II.E of the 2024 Enforcement Policy, Multiple Violations Resulting from the Same Incident.

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

PENALTY FACTOR	VALUE	DISCUSSION
		with Resolution No. R9-2017-0030,⁷ the Pacific Ocean is considered a key area for three beneficial use categories: habitats and ecosystems, consumption of fish and shellfish, and recreation.⁸ In addition, the Laguna Beach SMR is considered an Area of Special Importance for habitats and ecosystems. The Pacific Ocean Shoreline at Bluebird Canyon Drive (Bluebird Beach) is listed on the California 2024 Integrated Report as impaired for indicator bacteria.⁹ Discharges of untreated sewage to surface waters have expected potential impacts. In this case, beach closures restricted contact recreation for four days until samples collected for indicator bacteria met public health standards. According to the City's Biological Resources Damage Assessment Report,¹⁰ however, no sensitive or special-status animal species were observed within the discharge area. Therefore, the potential harm to beneficial uses is moderate and likely to attenuate without appreciable medium or long term acute or chronic effects.
Susceptibility to Cleanup or Abatement	1	A factor of 1 is assigned if less than 50 percent of the discharge is cleaned up. In this case, the City reported that, of the 152,705 total gallons of untreated sewage spilled, 73,895 gallons (48 percent) were recovered or cleaned up.

⁷ A copy of the Resolution is available at:

https://www.waterboards.ca.gov/rwqcb9/board_decisions/adopted_orders/2017/R9-2017-0030.pdf

⁸ More information on key beneficial uses and key areas is available at:

https://www.waterboards.ca.gov/sandiego/water_issues/programs/key_areas/

⁹ The California 2024 Integrated Report is available at:

https://www.waterboards.ca.gov/water_issues/programs/water_quality_assessment/2024-integrated-report.html.

¹⁰ See Table 4, Item 3.

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

PENALTY FACTOR	VALUE	DISCUSSION
Potential for Harm	7	Sum of the above three values: (Degree of Toxicity) + (Actual or Potential Harm) + (Susceptibility to Cleanup) OR $3+3+1 = 7$
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, Statewide General Order Prohibitions, and Regional General Order Prohibitions.
Per Gallon Factor	0.41	Factor obtained from Table 1 of the 2017 Enforcement Policy for discharge violations, using the Potential for Harm and Deviation from Requirement scores.
Volume Discharged	78,810 gallons	The Bluebird Beach Spill resulted in 78,810 gallons of untreated sewage that reached the Pacific Ocean at Bluebird Beach, a water of the state.
Adjustment for High Volume Discharges	\$2 per gallon	The 2017 Enforcement Policy provides that in most cases, the Water Boards shall apply the Per Gallon Factor to the maximum per gallon amount allowed under the Water Code for the violations (i.e., \$10 per gallon per Water Code section 13350). However, the Policy also allows the Water Boards to use a value between \$2 per gallon and \$10 per gallon with the above factor to determine the per gallon amount for discharges that are between 100,000 gallons and 2,000,000 gallons. As a settlement consideration, the San Diego Water Board Prosecution Team (Prosecution Team) finds \$2 per gallon appropriate since the total gallons spilled exceeded 100,000.

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

PENALTY FACTOR	VALUE	DISCUSSION
Per Gallon Liability	\$64,624	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, however, the Prosecution Team elected to use an adjustment of \$2 per gallon for the high volume discharge. The liability is calculated as follows: (Per Gallon Factor) x (Volume Discharged) x (\$ Per Gallon) OR $(0.41) \times (78,810 \text{ gallons}) \times (\\$2) = \\$64,624$
Initial Liability for Violation 1	\$64,624	Per Water Code section 13350(e), the Prosecution Team has elected to pursue administrative civil liability on a per gallon basis. Therefore, the Initial Base Liability for Violation 1 is equivalent to the Per Gallon Liability.
<i>Adjustments for Discharger Conduct – Violation 1</i>		
Culpability	1.1	The Bluebird Beach Spill occurred during a planned repair to remove a corroded ball valve, similar to that which caused a large sanitary sewer spill in 2019 along the City's North Coast Interceptor (NCI) trunk line. While the Bluebird Beach Spill was not the result of gross negligence and the maintenance was intended to be preventative, the repair was performed on a pressurized line and therefore an inherent risk. In addition, the repair work was performed approximately 500 feet from Bluebird Beach, a popular swimming beach within the Laguna Beach SMR. In light of these

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

PENALTY FACTOR	VALUE	DISCUSSION
		risk factors, the Prosecution Team expects a more conservative approach to repair work; a reasonable and prudent person would have planned to have the appropriate spill response equipment onsite in case of a spill (e.g. an adequate size pump hose and/or vacuum trucks on site), when being performed in a high-risk area upstream of a highly recreated area.
History of Violations	1.1	The 2017 Enforcement Policy states that a score of greater than 1.0 shall apply to this factor when the Discharger has had previous violations within the last five years. As referenced in Order No. R9-2021-0008,¹¹ the City experienced a 1.7 million gallon sanitary sewer spill from the NCI trunk line on November 27, 2019, approximately four years prior to this spill. Although not reflected in the penalty calculations, the City reported three other public Category 1 Spills in the five years prior to the Bluebird Beach Spill. These three spills occurred between November 29, 2018, and November 29, 2023, and resulted in an additional 1,230 gallons of sewage discharged to surface waters.¹²
Cleanup and Cooperation	1.0	The City recovered nearly half of the total spill volume, performed water quality monitoring and a biological assessment in accordance with the Statewide General Order, and was cooperative in communicating with the Prosecution Team. Therefore, a neutral score is appropriate.

¹¹ Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R9-2021-0008 became effective on June 9, 2021 and can be accessed at:
https://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2021/r9_2021_0008.pdf

¹² The California Integrated Water Quality System (CIWQS) Sanitary Sewer System Spill Reports can be accessed at:
https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/PublicReportSSOServlet?reportAction=criteria&reportId=sso_main

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

PENALTY FACTOR	VALUE	DISCUSSION
Total Base Liability Amount for Violation 1	\$78,195	Product of initial liability and penalty adjustment factors: (Initial Liability) x (Culpability) x (History of Violations) x (Cleanup and Cooperation) OR (\$64,624) x (1.1) x (1.1) x (1.0) = \$78,195

Violation 2 – Failure to timely submit a Spill Technical Report

As described above, the City is required to maintain and operate its collection system in compliance with the Statewide General Order and Regional General Order for sanitary sewer systems, which include monitoring and reporting requirements. In Section 5.13.1 of the Statewide General Order, a Category 1 Spill is defined as a spill of any volume of sewage from or caused by a sanitary sewer system that results in a discharge to surface waters or a drainage conveyance system that discharges to surface waters that is not fully captured. Section 3.1.3, Attachment E1 of the Statewide General Order also requires a Spill Technical Report to be submitted within 45 calendar days for any Category 1 Spill in which 50,000 gallons or more is discharged to surface waters. In accordance with Water Code section 13268, a discharger that fails to submit technical reports, as required by waste discharge requirements, is subject to administrative civil liability of up to \$1,000 per day for each day in which the violation occurs.

The Bluebird Beach Spill resulted in the discharge of 78,810 gallons of untreated sewage to surface waters. This spill met the definition of a Category 1 Spill, and at greater than 50,000 gallons, also required the submittal of a Spill Technical Report. The Bluebird Beach Spill Technical Report was due on January 15, 2024.¹³ On December 19, 2024, Prosecution Team staff notified the City that the report had not been submitted. In response, the City submitted the Spill Technical Report on January 17, 2025, 368 days after the January 15, 2024 due date. The City also provided additional supporting documentation on January 30, 2025.

The City's second violation is for failure to timely submit the Spill Technical Report for the Bluebird Beach Spill. For further detail on the penalty calculation methodology used for this violation, please reference the 2017 Enforcement Policy and 2024 Enforcement Policy sections on non-discharge violations and the discussion in the table below.

Table 2. Penalty Calculation for Violation 2 - Failure to Timely Submit a Spill Technical Report

PENALTY FACTOR	VALUE	DISCUSSION
Potential for Harm	moderate	Failure to timely submit the Bluebird Beach Spill Technical Report impairs the San Diego Water Board's ability to perform its regulatory functions.

¹³ The Spill Technical Report is due 45 days after the spill event per Section 3.1.3 of the Statewide General Order. However, if this due date falls on a weekend or holiday (Saturday, January 13, 2024), reports may be accepted the first weekday following (Monday, January 15, 2024).

Table 2. Penalty Calculation for Violation 2 - Failure to Timely Submit a Spill Technical Report (cont.)

		Additionally, per the 2017 Enforcement Policy, most non-discharge violations should be considered to present a moderate potential for harm.
Deviation from Requirement	major	Failure to submit the Bluebird Beach Spill Report is a direct violation of the Statewide General Order and renders the reporting requirement ineffective in its essential function (i.e. providing information).
Per Day Factor	0.55	The Prosecution Team elected to use the midpoint from the Per Day Factor range, obtained from Table 3 of the 2017 Enforcement Policy for non-discharge violations using the Potential for Harm and Deviation from Requirement scores.
Days of Violation	46	The Spill Technical Report was due January 15, 2024, but the City did not submit the report until January 17, 2025 (368 days late). In accordance with the 2017 Enforcement Policy, the Prosecution Team elected to compress the number of days of violation to 46 ¹⁴ because the violation did not result in a discreet economic benefit that can be measured on a daily basis.
Initial Liability for Violation 2	\$25,300	The liability calculated per day: (Per Day Factor) x (Days of Violation) x (\$ Statutory Maximum Per Day¹⁵) OR $(0.55) \times (46) \times (\\$1,000/\text{day}) = \\$25,300$

¹⁴ The first 30 days of the violation, plus each 5-day period until the 60th day, plus each 30-day period following (days 1-30, 35, 40, 45, 50, 55, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330, 360)

¹⁵ Pursuant to Water Code section 13268(b)(1).

Table 2. Penalty Calculation for Violation 2 - Failure to Timely Submit a Spill Technical Report (cont.)

<i>Adjustments for Discharger Conduct – Violation 2</i>		
Culpability	1.1	The City bears some culpability for the late report submittal. The City indicated that the late report was not intentional, and high staff turnover and reorganization during this time likely caused the oversight. A reasonable and prudent response would have been for the City to follow its Overflow Emergency Response Plan (OERP), ¹⁶ which describes the required submittal of technical reports for Category 1 Spills with over 50,000 gallons discharged to surface waters.
History of Violations	1.1	The City has a prior history of violations as described above in Table 1.
Cleanup and Cooperation	1.0	Once notified of the missing Spill Technical Report, the City immediately contacted Prosecution Team staff and remained in communication until the report and supporting documents were submitted.
Total Base Liability Amount for Violation 2	\$30,613	Product of initial liability and penalty adjustment factors: (Initial Liability) x (Culpability) x (History of Violations) x (Cleanup and Cooperation) OR $(\\$25,300) \times (1.1) \times (1.1) \times (1.0) = \\$30,613$
Total Base Liability for Violation 1 + Violation 2: \$108,808		

The 2017 Enforcement Policy states that five other factors must be considered before obtaining the final liability amount.

¹⁶ The City's OERP was uploaded to CIWQS on July 26, 2021.

Table 3. Other Factor Considerations

Economic Benefit	\$327 (Violation 1) \$63 (Violation 2)	The economic benefit is the avoided cost to treat the untreated sewage that was discharged to surface waters (Violation 1) and the delayed cost to submit the Spill Technical Report (Violation 2). <u>Violation 1:</u> The City gained an estimated economic benefit of \$327 with the avoided cost of treating 78,810 gallons of untreated sewage that was ultimately discharged to Bluebird Beach. This cost was calculated using estimates provided by the City on February 20, 2025¹⁷ and the United States Environmental Protection Agency (USEPA) economic benefit model, BEN 2024.0.0.¹⁸ <u>Violation 2:</u> Based on discussions with the City, the report took R. Gonzales (Deputy Director of Public Works) approximately one to two weeks to prepare. According to the City's salary classifications, the hourly salary range for this position is approximately \$63 to \$97 per hour.¹⁹ Using this information, the estimated cost for the City to produce the report ranged from \$2,520 to \$7,760 (\$63 x 40 hours to \$97 x 80 hours). Using the USEPA BEN model, total delayed costs for submitting this report were estimated at \$63.
Other Factors as Justice May Require	Did not include staff costs	The 2017 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.

¹⁷ See Table 4, Item 7.

¹⁸ See Table 4, Item 8.

¹⁹ This document is publicly accessible on the City's website at:

<https://www.lagunabeachcity.net/home/showpublisheddocument/21100/638730490966470000>

Table 3. Other Factor Considerations (cont.)

Ability to Pay and Ability to Continue in Business	No adjustment	The City of Laguna Beach is a public entity with the ability to raise funds. The San Diego Water Board is not aware of, and the City has not provided, any evidence of inability to pay.
Maximum Liability	\$788,100 (Violation 1) \$368,000 (Violation 2)	<u>Violation 1:</u> The maximum liability for the Bluebird Beach Spill is calculated using statutory maximum limits per Water Code 13350(e)(2): \$10 per gallon of waste discharged. $(\\$10) \times (78,810 \text{ gallons}) \times = \\$788,100$ <u>Violation 2:</u> The maximum liability for the late Spill Technical Report submittal is calculated pursuant to Water Code section 13268(b): up to \$1,000 for each day in which the violation occurs. $(\\$1,000) \times (368 \text{ days}) = \\$368,000$
Minimum Liability	\$360 (Violation 1) \$69 (Violation 2)	The 2017 Enforcement Policy states that the minimum liability is the economic benefit plus 10 percent. <u>Violation 1:</u> $(\\$327 + [(\\$327) \times (0.1)]) = \\$360$ <u>Violation 2:</u> $(\\$63) + [(\\$63) \times (0.1)] = \\$69$

Table 3. Other Factor Considerations (cont.)

Final Liability	\$108,808	The Final Liability Amount is the Total Base Liability plus any adjustment for the ability to pay, economic benefit, and other factors. For Violation 1, the adjusted Total Base Liability is \$78,195. For Violation 2, the adjusted Total Base Liability is \$30,613. In both cases the Total Base Liability falls between the Maximum and Minimum Liability. Therefore, the Final Liability Amount is \$108,808. $(\$78,195) + (\$30,613) = \$108,808$
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Table 4. Reference Documents Available Upon Request

Item No.	Document Handle No.	Item	Date
1	11538003	Certified Spill Report for November 29, 2023, Sanitary Sewer Spill, City of Laguna Beach, Spill ID 891368	2/2/2024
2	11538016	Technical Report for November 29, 2023, Sanitary Sewer Spill, City of Laguna Beach, Spill ID 891368	1/17/2025
3	11538000	Biological Resources Damage Assessment Report for November 29, 2023, Sanitary Sewer Spill, City of Laguna Beach, Spill ID 891368	1/30/2025
4	11538009	Orange County Health Care Agency (OCHCA) Beach Closure Checklist for November 29, 2023, Sanitary Sewer Spill, City of Laguna Beach, Spill ID 891368	1/30/2025
5	11538008	OCHCA Water Quality Sample Results for November 29, 2023, Sanitary Sewer Spill, City of Laguna Beach, Spill ID 891368	1/30/2025
6	11538015	SOCWA Water Quality Sample Results for November 29, 2023, Sanitary Sewer Spill, City of Laguna Beach, Spill ID 891368	1/30/2025
7	11538019	Email correspondence with R Gonzales, City of Laguna Beach, estimating sewage treatment costs	2/20/2025
8	11546917	USEPA economic benefit model, BEN 2024.0.0, City of Laguna Beach CS	3/5/2025