

REGIONAL BOARD RESPONSES TO DISCHARGERS NOVEMBER 2, 2007 COMMENTS

**ITEM 16, SUPPORTING DOCUMENT NO. 9
Administrative Civil Liability Contained in Complaint No. R9-2007-0099
For City of Vista & City of Carlsbad
DISCHARGE OF UNTREATED SEWAGE TO BUENA VISTA LAGOON**

Comment No.	Summary of Discharger Comment	Regional Board Staff Response	Staff Report Section
3.0 CRITICAL CORRECTIONS TO THE COMPLAINT			
1	The Board alleges the discharge occurred from a 24-inch pipe located at the Buena Vista Pump Station (3.0 Allegations Lines 3-4). This should be corrected to indicate that the discharge occurred from the Buena Vista Force Main down system from the Buena Vista Pump Station. Prior discharges at the pump station that are later referenced in complaint are unrelated to the present discharge and were the result of completely different factors.	The Regional Board does not allege the spill began at the pump station. The Staff report clearly states that the discharge occurred from the 24-inch diameter force sewer main and not the Buena Vista Pump Station. The reference to Buena Vista Pump Station in this section was to provide information on the approximate location.	Section 3.0 Allegations, Page 3
2	The Complaint Staff Report notes that the Cities' April report states the discharge started sometime Friday, March 30, or Saturday March 31, 2007 (4.1 Nature, Extent, & Gravity of the Sewage Discharge. Line 3). The report, however, indicates that the discharge date was determined to be March 31, 2007 (IO Response 1.0 Background, paragraph 2: 4.4 Calculation of Wastewater Discharge Volume, paragraph 1). There are no references to March 30 in our submitted report, and no other areas of the Complaint appear to have the same error.	Comment noted. The Regional Board accepts the Dischargers estimate for the start date of the sewage discharge as Saturday March 31, 2007. However, the start date of the spill is open to conjecture as the dischargers have no detailed flow monitoring data, therefore, the actual start time and date of the discharge can only be estimated at this time.	Section 4.1 Nature, Extent, & Gravity of the Sewage Discharge, Page 4
3	The Complaint Staff Report asserts that "because the City of Carlsbad could not locate the pipeline as-built plans to ensure the exact location of the	Regional Board staff disagrees. Not having access the as-built plans and information on the exact location and depth of the force sewer main sewer	Section 4.1 Nature, Extent, & Gravity of the Sewage

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	<p>pipeline, the needed work to uncover and repair the pipeline was delayed” (4.1 Nature, Extent, & Gravity of the Sewage Discharge). This is not correct. While plans could not be immediately located for a 25 year old pipe at 1:30 AM by the responding engineers and public works supervisors, the determination that the pipe excavation and repair would require a specialty contractor and shoring was made prior to this search for as-built plans. Due to the saturation of soils around the pipe, the early excavation indicated that excavation all failures would prevent safe access without acquisition of trench shoring (IO Response, Appendix, Sunday 4/1/07-2130 hrs). The timing of the break and the need for a specialty contractor rendered the acquisition of the as-built plans, wholly irrelevant to the response needs and timeline for termination of the release.</p>	<p>pipeline directly contributed to a significant delay in the Dischargers’ spill response action. Since the Dischargers did not know the depth of the force sewer main pipe, they initially selected inadequate equipment (backhoe) to uncover the pipe thereby causing a delay in obtaining services of a specialty contractor to complete the needed repairs. The observations by Regional Board staff made on April 1, 2007 around 1000 (12 Hours after the City of Carlsbad started using a backhoe) indicated that repair work on the force sewer main pipe had not yet begun. Repair of the pipeline by a specialty contractor was delayed until April 2, 2007, since the force sewer main was in groundwater and a special coffer dam had to be constructed before dewatering could be completed.</p>	<p>Discharge, Page 4</p>
4	<p>The Staff Report for the Complaint indicates that; “Warning signs were posted around the lagoon from April 2 through April 19 for loss of 17 days of recreation. The coastal areas 600 feet south and 1200 feet north of the Buena Vista Lagoon outlet were also posted with warning signs as a precautionary measure, from April 2, 2007 until April 9, 2007, for an additional loss of 7 days of recreation”. It should be noted that the ocean posting is part of the total 17 day posting and once it was confirmed that sewage had not reached the ocean, these signs were removed leaving the lagoon postings for an additional 10 days.</p>	<p>Comment Noted</p>	<p>Section 4.1 Nature, Extent, & Gravity of the Sewage Discharge, Page 5</p>
5	<p>The Staff Report for the complaint indicates that; “The Dischargers reported a fish kill of approximately 1,700 individuals with some bird, bullfrog, and crayfish kills”. It is prudent to clarify that those losses were quantified as 1694 fish, 4 birds, 1</p>	<p>Comment noted.</p>	

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	bullfrog, and crayfish based on regular survey and collections.		
6	<p>The Staff Report indicates that “The California Department of Fish and Game and United States Fish and Wildlife Services reported that the sewage discharge and subsequent repair work impacted the Light-footed Clapper Rail, a Federal and State endangered species. There has been no such determination of impact. In fact, in a May 31, 2007 letter to the Board from the USFWS, it was explicitly stated that “potential impacts to the light-footed clapper rail, the Belding’s savannah sparrow, and other migratory bird species are yet to be determined. This is based on a prior assertion made by the USFWS that Based on 2007 survey data, light footed clapper rails were nesting in the Buena Vista Lagoon near the discharge site at the time of the release (Zemba unpubl. Data 2007 and pers. Comm.. 2007). Survey data (2006) also indicate that the Belding’s savannah sparrow (<i>Passerculus sandwichensis beldingi</i>) was also nesting in the lagoon at this time of the year (McKee-Lewis unpubl. Data 2006). Disruption of flushing of breeding birds nesting in the lagoon, with associated impacts (including failure of nesting attempts), may have occurred as a result of operational activities during the incident”.</p> <p>Please note that the Cities have provided information in our IO Response (pgs. 43-44) addressing the likelihood of affects to state and federally listed species. Among the information is a discussion of the fairly significant separation between the discharge point at the Lagoon wildlife viewing area and the clapper rails nesting sites. There is also a specific discussion that the distance between the pipeline rupture location and the clapper rails nesting</p>	<p>It is the understanding of the Regional Board that DFG and USFWS has requested the Cities provide relevant information to fully assess potential impacts to light-footed clapper rail and/or other endangered species in the Lagoon and that the necessary information, and that this information has not be received by those agencies. Since the assessment of short and long-term impacts to ecological receptors has not yet completed, the proposed civil liability considered only potential impacts to the light-footed clapper rail in calculating the ACL amount.</p>	<p>Section 4.1 Nature, Extent, & Gravity of the Sewage Discharge, Pages 5</p> <p>Section 5.2 Proposed Civil Liability page 9</p>

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	<p>site is approximately 800-1000 feet. Between these areas is extensive cattail marsh, a segment of marsh that has been removed by the Department of Fish & Game to maintain viewing access, and wildlife viewing area and kiosk. Clean-up operations were all staged from existing designated fishing access points, at the concrete bridge structures, and in areas where the Department had removed shoreline vegetation. No staging or vegetation removal occurred in areas known to be occupied by listed species. The Board's Staff Report appears to be overstated to conclude impacts to listed species beyond that which has been demonstrated or may be reasonably inferred with adequate factual support.</p>		
7	<p>The Staff Report indicates that "The Dischargers could have implemented measures to reduce the amount of the discharge. The discharge was not discovered for almost 2 days because the Dischargers failed to have the capability to monitor the flow or pressure in the force sewer main." This statement is not correct. If the flow variance data are reviewed in Appendix 4 of the Discharger's Response to the IO, it is clear that the variance measured on Saturday, March 31, was only 6.7% of that measured on Sunday, April 1. The variance was higher on Monday when the pipe was exposed and subject to less soil pressure thus allowing a greater rate of release. If it is assumed that a relatively consistent rate of release occurred on Saturday as on Sunday, it is likely that the pipe leak began late Saturday night at about 10:30 PM. It was ultimately detected and called in at 6:52 PM on Sunday. This would mean that the discharge was likely detected approximately 20.5 hours after initial breach.</p>	<p>Regional Board staff disagrees. The Dischargers attempt to downplay the delay in discovering the discharge. However, the lack of effective monitoring measures resulted in the delay in alerting the Dischargers that the force sewer main was ruptured. The fact that the sewage discharge was discovered and reported by the member of the public rather than by the Dischargers reflects on the lack of an adequate monitoring and inspection program. In the absence of adequate monitoring measures, start time/date of the discharge and exact volume of the discharge can only be estimated at this time.</p>	<p>Section 4.2 Degree of Culpability, Page 5</p>
8	<p>The Staff Report indicates that "The Dischargers</p>	<p>Regional Board staff disagrees. Regardless of the</p>	<p>4.2.2 Prevention of</p>

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	<p>recognized that the force sewer main needed improvement and/or replacement. As part of the City of Carlsbad's 2003 Sewer Master Plan, the City of Carlsbad included a project to install a parallel force main from the Buena Vista Pump Station to I-5 likely using a high-density polyethylene pipe that is not susceptible to corrosion, but the City of Carlsbad failed to construct the parallel force main before the discharge." Contrary to the Board Staff Report claims, however, the City of Carlsbad's 2003 Sewer Master Plan, proposed to install a parallel force main from the Buena Vista Pump Station to I-5, not for reasons of concern over competence of the existing pipe, but rather for capacity enhancements based on regional planning demands for sewer service. This upgrade did not include improvements to the existing pipe, as it was not nearing its recognized service life of 50 years. Parallel piping and lining of the existing pipe (dependent upon a parallel pipe for flow diversion) are now planned to be advanced to the earliest practical period based on a new understanding that potential corrosion areas may exist elsewhere on the pipe. This change in Master Plan programming was explained in the Discharger's September 19 supplement to the IO response.</p>	<p>justification, the proposed parallel force main would have helped to mitigate potential risks of sewage discharge from the force sewer main as well as address capacity issues; thereby providing enhanced protection of Buena Vista Lagoon. Adding a parallel pipe would have either prevented the discharge or allowed the dischargers to take short-term actions to greatly reduce the discharge of untreated sewage into Buena Vista Lagoon. Having a parallel force sewer main pipe is common practice for other sewer agencies in the San Diego Region so a backup system is available in case of pipe failure. The viability of this strategy is supported by the recommendations of the Dischargers' final corrosion report (by Schiff and Associates), which include installation of new pipe and relining the existing pipe to enhance the integrity of the existing pipe and provide for an effective backup system.</p>	<p>Discharge. Page 7</p>