

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**TECHNICAL ANALYSIS
FOR
COMPLAINT NO. R9-2005-0265**

**SUPPORTING
ADMINISTRATIVE CIVIL LIABILITY
AGAINST THE
CITY OF ESCONDIDO
HALE AVENUE RESOURCE RECOVERY FACILITY**

For

**FAILURE TO COMPLY
WITH
ORDER NO. 99-72, NPDES NO. CA0107981;
ORDER NO. R9-2003-0394, NPDES NO. CA0108944;
CEASE AND DESIST ORDER NO. 96-31;
and
ORDER NO. 93-70**

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I. TABLE OF CONTENTS.....	1
II. EXECUTIVE SUMMARY.....	3
III. INTRODUCTION.....	7
IV. BACKGROUND.....	7
V. ALLEGED VIOLATIONS.....	8
VI. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY.....	15
A. Factors to be Considered When Determining Administrative Civil Liability.....	15
A.1. The City of Escondido Violated Effluent Limitations Contained in Discharge Specification B.1.a. of Order No. 99-72.....	16
A.2. The City of Escondido Violated the Effluent Flow Limitation Contained in Prohibition A.1 of Order No. 99-72	29
A.3. The City of Escondido Discharged Secondary Effluent into Escondido Creek and San Elijo Lagoon in Violation of Prohibition A.1 of Order No. 99-72	30
A.4. The City of Escondido Violated Effluent Limitations Contained in Discharge Specification B.1.d. and B.1.g. of Order No. R9-2003-0394	32
A.5. The City of Escondido Discharged Secondary Effluent into Escondido Creek and San Elijo Lagoon in Violation of Discharge Specification B.5 of Order No. R9-2003-0394	34
A.6. The City of Escondido Failed to Comply with Reporting Requirements Contained in Directive No. 4 of Cease and Desist Order No. 96-31	36
A.7. The City of Escondido Failed to Comply with the Final Compliance Date Contained in Directive No. 2 to Cease and Desist Order No. 96-31	38
A.8 The City of Escondido Failed to Comply with Reporting Requirements Contained in Directive No. 2 of Addendum No. 1 to Cease and Desist Order No. 96-31	40
A.9. The City of Escondido Violated Effluent Limitations Contained in Discharge Specification B.1 of Order No. 93-70	41

VI. CIVIL LIABILITY	43
VII. TOTAL PROPOSED ADMINISTRATIVE CIVIL LIABILITY	49

List of Appendices

Appendix A	Violation Table No. 1, 393 Effluent Limitation Violations Order No. 99-72
Appendix B	Violation Table No. 2, 47 Effluent Flow Violations Order No. 99-72
Appendix C	Escondido Spill Report, 73,500 gallons secondary effluent February 27, 2005
Appendix D	Violation Table No. 3, 11 Effluent Limitation Violations Order No. R9-2003-0394
Appendix E	Escondido Spill Report, 280,000 gallons secondary effluent January 9-13, 2005
Appendix F	Violation Table No. 4, 14 Semi-annual Status Reports Cease and Desist Order No. 96-31
Appendix G	Violation Table No. 5, Final Compliance Date Cease and Desist Order No. 96-31
Appendix H	Violation Table No. 6, Final Compliance Report Cease and Desist Order No. 96-31
Appendix I	Violation Table No. 7, 16 Effluent Limitation Violations Order No. 93-70
Appendix J	NPDES Order No. 99-72
Appendix K	May, June, July, August 2004 Self Monitoring Reports Order No. 99-72
Appendix L	Required Technical Investigation Order No. R9-2005-0077, February 15, 2005
Appendix M	Hale Avenue Resource Recovery Facility Required Technical Investigation Order No. R9-2005-0077
Appendix N	Evaluation of Treatment Plant Operation and Potential Causes of Treatment Plant Effluent Limitation Violations (April to June 2005) for the City of Escondido Hale Avenue Resource Recovery Facility, April 7, 2005
Appendix O	Hale Avenue Resource Recovery Facility 13 Month Compliance Statement July 1998 Through July 1999, August 27, 1999
Appendix P	Order No. 85-72, An Order for Issuance of a Time Schedule for the City of Escondido Hale Avenue Wastewater Treatment Facility, San Diego County
Appendix Q	Cease and Desist Order No. 96-31 for the City of Escondido
Appendix R	January, February, March, 2005 Self Monitoring Reports Order No. 99-72
Appendix S	NPDES Order No. R9-2003-0394
Appendix T	January, February 2005 Self-Monitoring Reports Order No. R9-2003-0394
Appendix U	Regional Board Request for Technical Report, February 8, 2005
Appendix V	City of Escondido, Required Technical Report, February 25, 2005
Appendix W	Regional Board September 23, 2002 Letter to City of Escondido
Appendix X	Notice of Violation No. R9-2003-0380, October 6, 2003
Appendix Y	City of Escondido Response to Notice of Violation No. R9-2003-0380, November 10, 2003
Appendix Z	Addendum No. 1 to Cease and Desist Order No. 96-31
Appendix AA	Regional Board letter to City of Escondido, February 11, 2003
Appendix BB	WDR Order No. 93-70
Appendix CC	January, February, March Self-monitoring Report Order No. 93-70
Appendix DD	April, May, June, July, August, September, October Self-monitoring Report Order No. 93-70

II. EXECUTIVE SUMMARY

The City of Escondido (City) owns and operates the Hale Avenue Resource Recovery Facility (HARRF), a municipal wastewater treatment system. The City discharges treated wastewater from the HARRF pursuant to waste discharge requirements contained three separate orders issued by the Regional Board. Primarily, the City discharges secondary treated effluent through the Escondido Land Outfall that runs approximately nine miles along Escondido Creek and the San Elijo Lagoon, and then to the San Elijo Ocean Outfall for disposal in the Pacific Ocean in accordance with Order No. R9-2005-0101, NPDES No. CA0108971. Order No. R9-2005-0101 adopted on June 8, 2005, superceded Order No. 99-72.

During extreme wet weather conditions the City discharges tertiary treated effluent to Escondido Creek pursuant to waste discharge requirements contained in Order No. R9-2003-0394, NPDES No. CA0108944. The City pursued the wet weather discharge as a means of compliance with Cease and Desist Order No. 96-31, adopted by the Regional Board on June 16, 1996 in response to two discharges of secondary effluent into Escondido Creek resulting from flow restrictions in the San Elijo Ocean Outfall.

The City also sells recycled water for irrigation purposes under waste discharge requirements prescribed in Order No. 93-70. All of the treated effluent is conveyed through various treatment units at the HARRF, located at 1521 Halve Avenue, adjacent to Escondido Creek in a mixed commercial and residential area of the City.

HARRF Ocean Outfall Discharge Order No. 99-72, NPDES No. CA0107981

Effluent Limitations Subject to Mandatory Minimum Penalties

During May, June, July, and August 2004 the wastewater discharged through the San Elijo Outfall to the Pacific Ocean contained 393 violations of the total suspended solids (TSS) and carbonaceous oxygen demand (CBOD) effluent limitations prescribed in Order No. 99-72. These violations are subject to Mandatory Minimum Penalties (MMP) totaling \$1,170,000 under California Water Code (CWC) sections 13385 (h) and (i).

The City asserts the violations are the result of illegal discharges to the sewer system from an industrial discharger that resulted in an operational upset of the biological treatment process at the HARRF and are therefore exempt from MMP under provisions for “intentional act of a third party “ (CWC section 13385(j)(1)(C)). To exempt the effluent violations, the Regional Board must determine that the violations were caused by an intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight by the City.

Technical Analysis for
Complaint No. R9-2005-0265

The City also asserts that if the exemption does not apply, then at least the MMP should be reduced under provisions for “single operational upset” (CWC section 13385(f)). The MMP could be reduced to \$717,000, if the Regional Board determines conditions at the plant meet the definition for single operational upset. To reduce the MMP, the Regional Board would need to find that:

- (1) The upset was not caused by wastewater treatment operator error or discharger negligence;
- (2) The violations would not have continued for more than one day if an operational upset had not occurred; and
- (3) The discharger carried out all reasonable and immediately feasible actions to reduce noncompliance with the applicable effluent limitations.

The collapsing of violations due to a single operational upset cannot exceed 30 days.

Regional Board review of the record, including assistance from Boris Trgovcich (State Board), revealed no evidence that constituents found in any of the City’s sampling efforts during the violation period caused the plant violations.

On the contrary, City records indicate the violations are not exempt from MMP because even if an illicit discharge entered the plant, the City did not implement good judgment, and their actions likely exacerbated the effects of the problems at the plant. The effects could have been prevented or avoided by the exercise of due care or foresight. In fact, the City’s records indicate that its response to their toxic load theory likely exacerbated and prolonged the poor performance of the aeration basins causing the lengthy violation period which is inconsistent with a single operational upset.

The State and Regional Boards have concluded that the violations at the HARRF were probably caused by a combination of events, most of which could have been controlled by the treatment plant operators. Based on that conclusion, the City has not provided adequate information to support a claim that the exemptions in CWC section 13385 apply to the violations reported at the HARRF therefore a reduction in the MMP is not supported.

Flow Violations Subject to MMP

During January, February, and March 2005, the City measured 47 violations of the effluent flow limitation contained in Order No. 99-72. The flow limitation violations are all serious violations pursuant to CWC section 13385(h) and are subject to MMP totaling \$132,000.

Discharge of Secondary Treated Effluent

On February 27, 2005, the City discharged 73,500 gallons of wastewater treated to secondary effluent standards to Escondido Creek from an overflow in the Escondido Land Outfall. The discharge is attributed to treatment plant operator

error during a power outage at the HARRF. The discharge resulted in the posting and closure of Escondido Creek and San Elijo Lagoon, an “Impaired Water Body” designated by the Regional Board.

HARRF Wet Weather Discharge Order No. R9-2003-0394, NPDES No. CA0108944

Effluent Limitation Violations Subject to MMP

Between January 9, 2005 and February 25, 2005 the City measured 11 violations of effluent limitations contained in Order No. R9-2003-0394. The violations occurred during the first wet weather discharge to Escondido Creek initiated by the City. The violations are all serious violations pursuant to CWC section 13385(h) and are each subject to \$3,000 MMP totaling \$33,000.

Discharge of Secondary Treated Effluent

Between January 10 and 11, 2005 the City discharged 280,000 gallons of wastewater treated to secondary effluent standards to Escondido Creek adjacent to the HARRF in violation of Order No. R9-2003-0394. The discharge occurred while the HARRF was discharging secondary treated effluent in excess of its permitted flow rate to the Pacific Ocean via the San Elijo Ocean Outfall and tertiary treated effluent to Escondido Creek. The City was discharging the tertiary treated effluent below its permitted flow rate when the secondary discharge occurred. According to the City, it occurred because of inadequate capacity in the outfall, and inadequate ability to store additional wastewater onsite. The Health Department posted the Ocean waters and closed Cardiff State Beach for a period of time after the discharge.

HARRF Cease and Desist Order No. 96-31

Failure to Submit Semi-annual Status Reports

The Regional Board issued Cease and Desist Order No. 96-31 to the City with a time schedule to increase wastewater disposal capacity at the HARRF due to past discharges of secondary effluent to Escondido Creek. During the extended time period it took to expand the facility, the City failed to submit any of the fourteen required semi-annual status reports.

Failure to Comply with Final Compliance Date

The City failed to initiate the facilities necessary to prevent secondary discharges to Escondido Creek by the final compliance date of June 16, 2003. On November 10, 2003, the City reported to the Regional Board that they had not complied with the final compliance date.

Late Submittal of Final Compliance Report

After the Regional Board extended the final compliance date to June 16, 2003, the City failed to submit the final compliance report, required by Addendum No. 1 to

Cease and Desist Order 96-31, issued on February 5, 2003, until after a Notice of Violation was issued citing the violation. The report was submitted 138 days late.

HARRF Reclamation Order No. 93-70

Effluent Limitation Violations

Between January 9, 2005 and March 7, 2005 the City reported seven violations of the daily average turbidity effluent limitation. The City claims the excessive turbidity was caused by extreme wet weather conditions during the period. Because of capacity problems at the HARRF due to high influent flows, the City was forced to continue diverting sewage into the reclamation system during a time when most irrigation was not necessary.

Between April 11, 2005 and October 2, 2005, the City reported seven violations of the daily maximum and two violations of the 12-month average manganese effluent limitations. The City attributes the manganese violations to the City's water treatment plant's use of local water from Lake Wohlford instead of imported water, which was available due to high rainfall totals during the wet season. The City experimented with using alternative coagulation chemicals at the water treatment plant that are lower in manganese content, but at that time were unable to bring manganese levels in the HARRF recycled water into compliance with the 12-month average effluent limitation. Subsequently, the City requested an increase in the effluent limitation, rather than reducing/eliminating the manganese concentrations in the discharge.

III. INTRODUCTION

This report provides a summary of factual evidence to support administrative imposition of \$1,797,150 civil liability against the City of Escondido (City), for violations of California Regional Water Quality Control Board, San Diego Region (Regional Board) Order Nos. 99-72, R9-2003-0394, 93-70 and Cease and Desist Order No. 96-31.

IV. BACKGROUND

The Hale Avenue Resource Recovery Facility (HARRF) is a municipal wastewater treatment system that treats domestic, commercial and industrial wastewater from a population of approximately 173,300 within the City and the community of Rancho Bernardo within the City of San Diego. Wastewater treatment includes bar screens and grit removal, primary sedimentation, secondary aeration and clarification, and solids handling. The HARRF currently discharges up to 18 million gallons per day (MGD) of secondary treated effluent to the Pacific Ocean pursuant to waste discharge requirements contained in Order No. R9-2005-0101, NPDES No. CA0107981, *Waste Discharge Requirements for the City of Escondido, Hale Avenue Resource Recovery Facility, Discharge to the Pacific Ocean via the Escondido Land Outfall and the San Elijo Ocean Outfall*, adopted by the Regional Board on June 8, 2005. Order No. R9-2005-0101 supercedes Order No. 99-72, adopted by the Regional Board on November 10, 1999.

The City also discharges up to 9.0 MGD of tertiary treated effluent to Escondido Creek during extreme wet weather conditions pursuant to waste discharge requirements contained in Order No. R9-2003-0394, NPDES No. CA 0108944, *Waste Discharge Requirements for the City of Escondido, Hale Avenue Resource Recovery Facility, Intermittent Wet Weather Discharge to Escondido Creek, San Diego County*, adopted by the Regional Board on December 10, 2003. Escondido Creek is a tributary to San Elijo Lagoon, which is listed on the State's List of "Impaired Water Bodies" [required by subdivision (d) of Clean Water Act Section 303, 33 USC 1313] for water quality impairments associated with excessive sediment, coliform and nutrient concentrations.

The City pursued the wet weather discharge as a means of compliance with Cease and Desist Order No. 96-31, issued by the Regional Board on June 16, 1996 in response to two secondary treated effluent discharges to Escondido Creek during extreme wet weather conditions. The discharges were caused by flow restrictions in the San Elijo Ocean Outfall.

The City also sells up to 9 MGD of tertiary treated effluent for irrigation purposes to various locations within the City pursuant to waste discharge requirements prescribed in Order No. 93-70, *Waste Discharge Requirements for the City of Escondido Hale Avenue Regional Reclamation Facility, San Diego County*.

The Regional Board can impose civil liability for violations of NPDES permits based on criteria established in California Water Code (CWC) section 13385(e) and may range as high as:

- \$10,000 per day, per violation, and up to \$10 per gallon of waste discharge and not cleaned up (after the first 1,000 gallons).

The Regional Board can impose civil liability for violation of an order of the board in accordance with CWC section 13327 as follows:

- \$5,000 per day, per violation
- When there is no discharge, the civil liability shall not be less than \$100 per day unless the regional board makes express findings setting forth the reasons for its action based upon the factors contained in section 13327.

As of January 2000, CWC section 13385 was amended to include the imposition of mandatory minimum penalties (MMPs) for violations of effluent limitations prescribed in NPDES permits. The applicability of MMPs to effluent limitation violations addressed in this enforcement action are summarized as follows:

- An MMP of \$3,000 shall be assessed for each “serious” violation. The Water Code defines serious violations as a waste discharge that violates the effluent limitation contained in the applicable waste discharge requirements for a Group I pollutant by 40 percent or more or for a Group II pollutant by 20 percent or more. Pollutant groups are specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations.
- Effluent limitation violations that are not serious violations shall be assessed an MMP of \$3,000 if violations occur four or more times in any six month period.

Exemptions to MMPs are affirmative defenses for which the City bears the burden of proof.

V. ALLEGED VIOLATIONS

HARRF Ocean Outfall Discharge Order No. 99-72, NPDES No. CA0107981

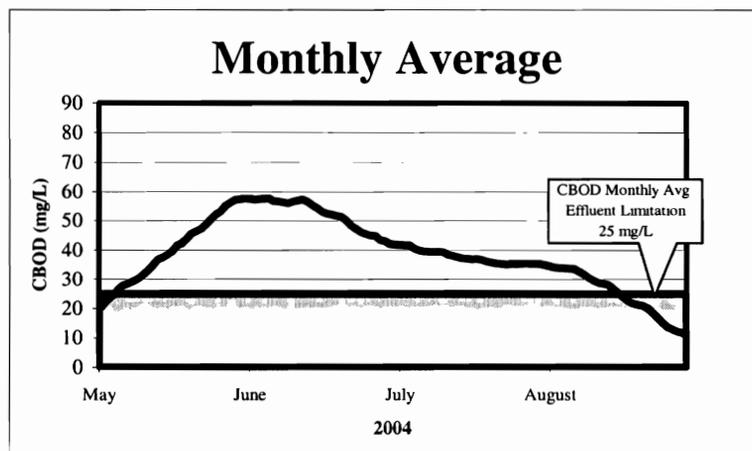
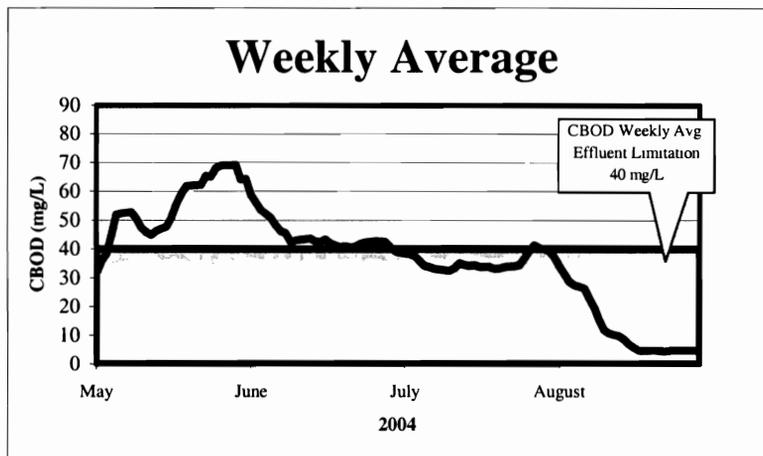
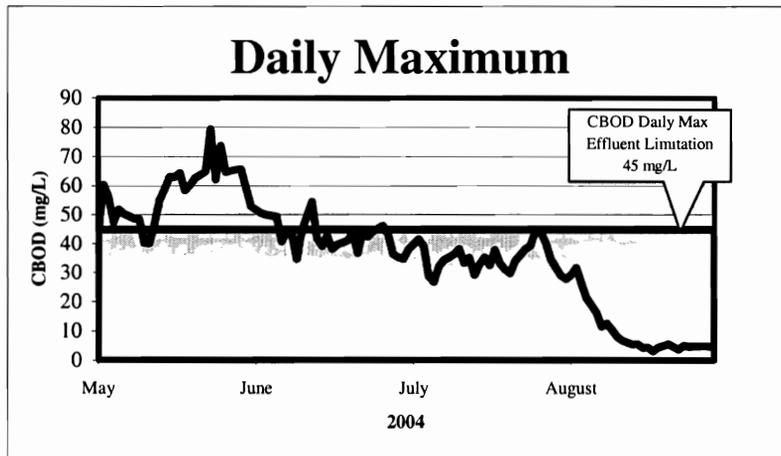
A. The City of Escondido Violated Effluent Limitations Contained in Discharge Specification B.1.a. of Order No. 99-72

Between May 3, 2004 and August 17, 2004, the City violated the Maximum at Any Time, Weekly Average and Monthly Average carbonaceous oxygen demand and total suspended solids effluent limitations and the Percent Removal carbonaceous oxygen demand effluent limitation prescribed in Order No. 99-72

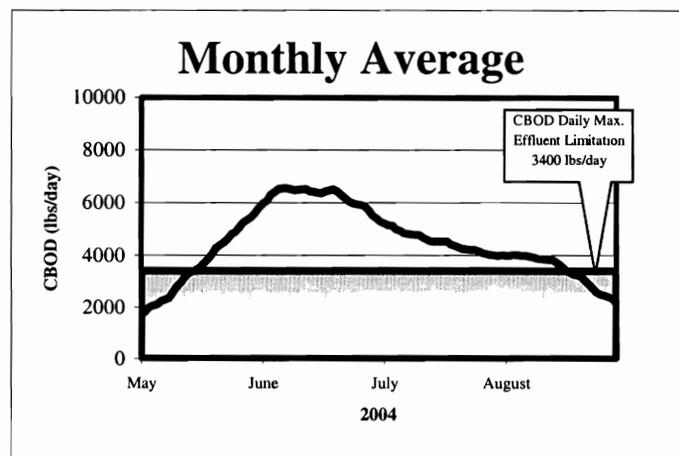
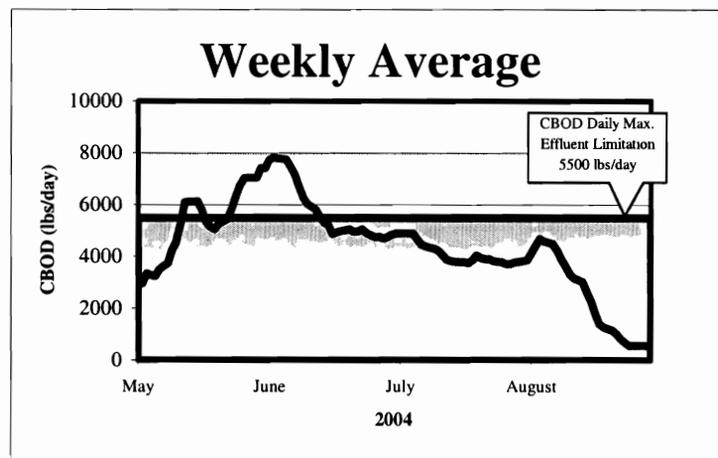
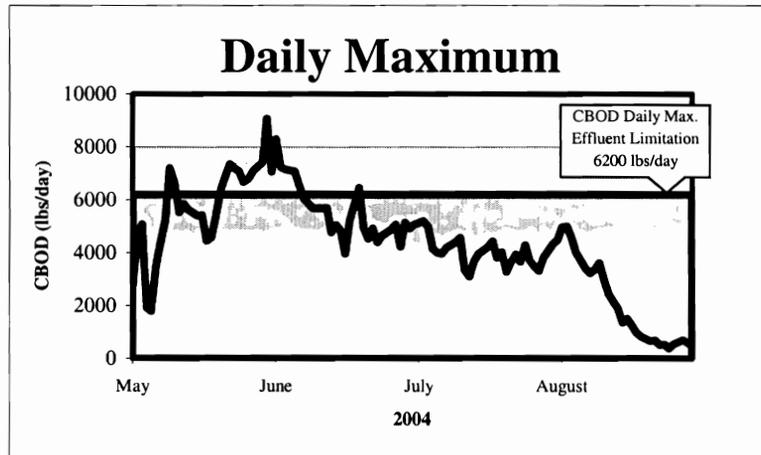
Technical Analysis for
Complaint No. R9-2005-0265

three hundred and ninety-three times (393) as depicted in the following graphical representations and as summarized in Violation Table No. 1 (Appendix A).

Carbonaceous Oxygen Demand concentration graphs
City of Escondido - Hale Avenue Resource Recovery Facility (HARRF)
Effluent Monitoring Data 2004

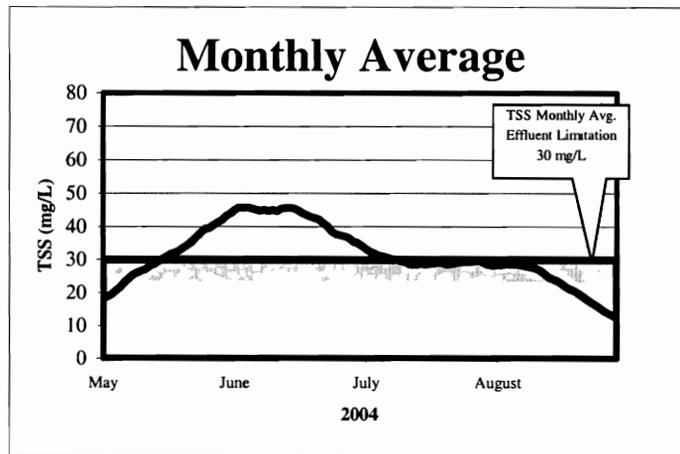
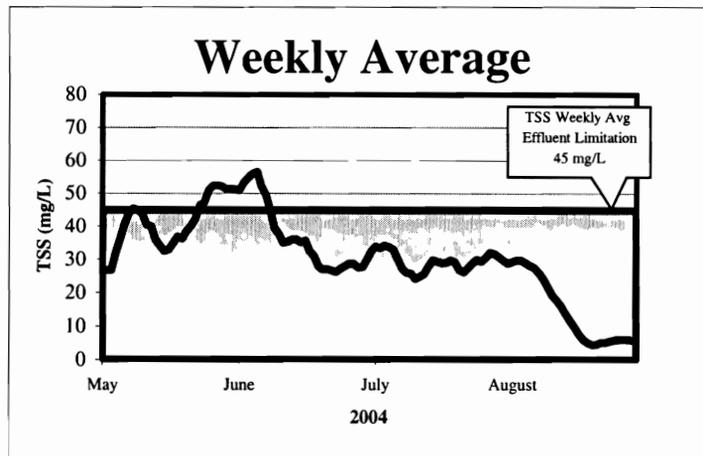
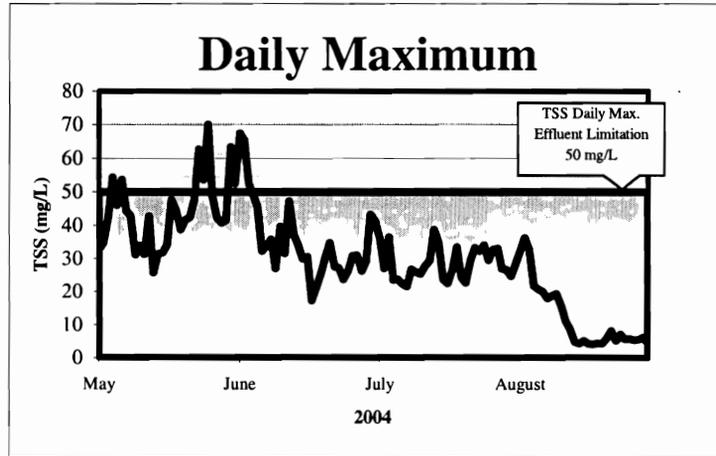


Carbonaceous Oxygen Demand mass loading graphs
City of Escondido - Hale Avenue Resource Recovery Facility (HARRF)
Effluent Monitoring Data 2004

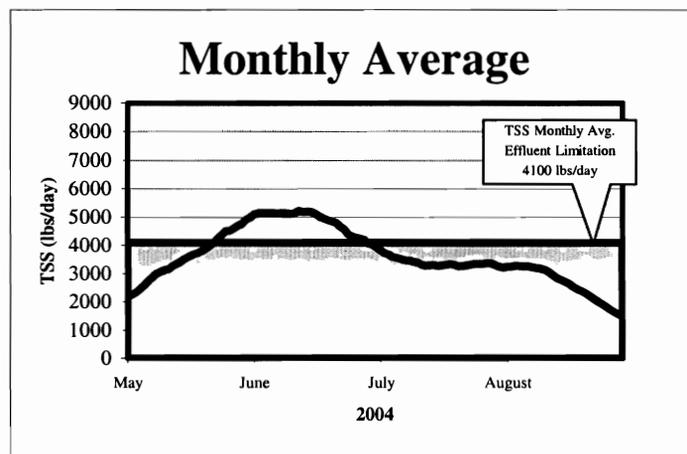
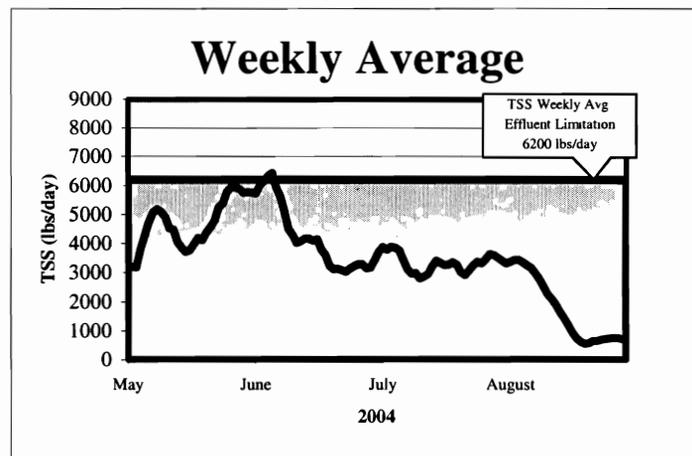
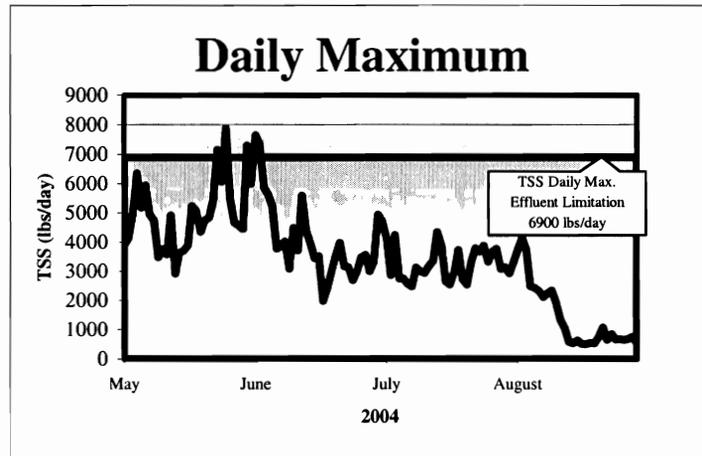


Total Suspended Solids concentration graphs

City of Escondido - Hale Avenue Resource Recovery Facility (HARRF)
Effluent Monitoring Data 2004

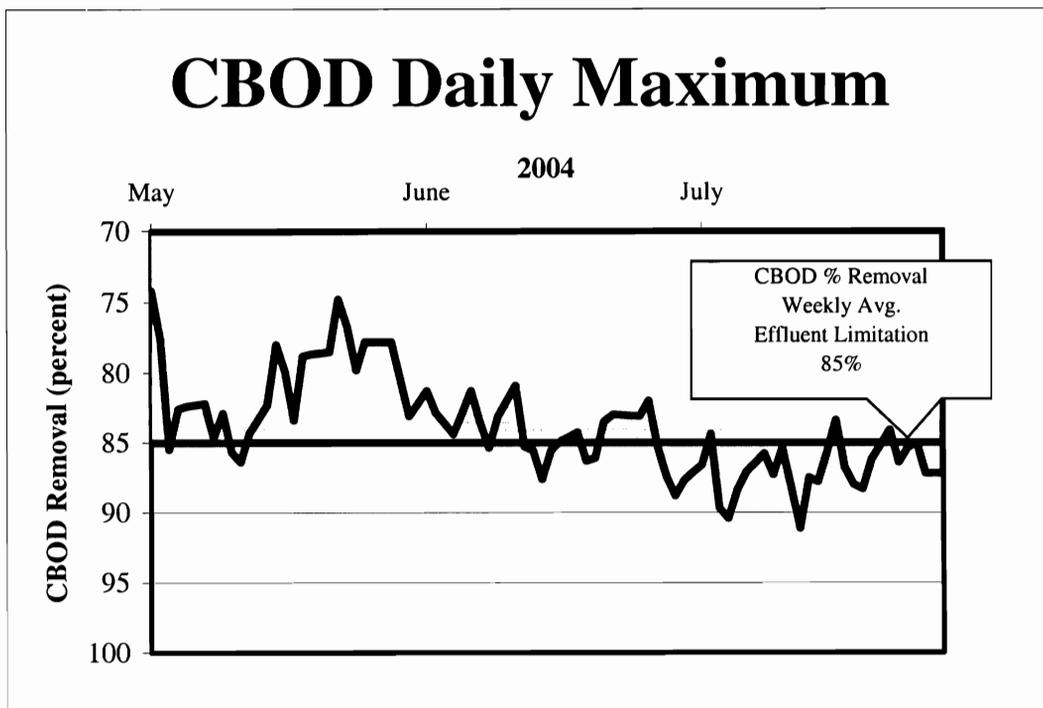
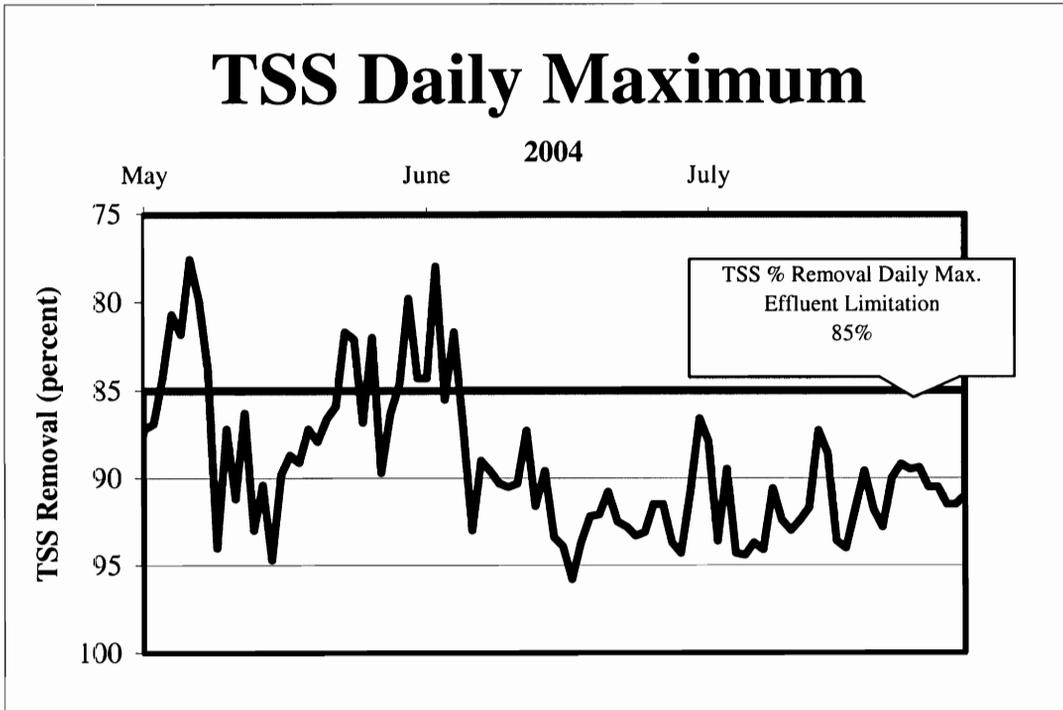


Total Suspended Solids mass loading graphs
City of Escondido - Hale Avenue Resource Recovery Facility (HARRF)
Effluent Monitoring Data 2004



Total Suspended Solids and Carbonaceous Oxygen Demand percent removal graphs

City of Escondido - Hale Avenue Resource Recovery Facility (HARRF)
Effluent Monitoring Data 2004



B. The City of Escondido Violated the Effluent Flow Limitation Contained in Prohibition A.5 of Order No. 99-72

Between January 3, 2005 and March 13, 2005, the City violated the effluent flow limitation prescribed in Order No. 99-72 forty seven times (47) as summarized in Violation Table No. 2 (Appendix B).

C. The City of Escondido Discharged Secondary Effluent into Escondido Creek and San Elijo Lagoon in Violation of Prohibition A.1 of Order No. 99-72

On February 28, 2005, the City discharged 73,500 gallons of secondary effluent from the Escondido Land Outfall into Escondido Creek and San Elijo Lagoon as documented in the City's spill report (Appendix C).

HARRF Wet Weather Discharge Order No. R9-2003-0394, NPDES No. CA0108944

D. The City of Escondido Violated Effluent Limitations Contained in Discharge Specification B.1.d. and B.1.g. of Order No. R9-2003-0394

Between January 9, 2005 and February 25, 2005, the City violated the Daily Average turbidity, Daily Maximum nitrite and nitrogen effluent limitations prescribed in Order No. R9-2003-0394 eleven times (11) as summarized in Violation Table No. 3 (Appendix D).

E. The City of Escondido Discharged Secondary Effluent into Escondido Creek and San Elijo Lagoon in Violation of Discharge Specification B.5 of Order No. R9-2003-0394

On January 11 and 12, 2005, the City discharged 280,000 gallons of secondary effluent into Escondido Creek and San Elijo Lagoon as documented in the City's spill report (Appendix E).

HARRF Cease and Desist Order No. 96-31

F. The City of Escondido Failed to Comply with Reporting Requirements Contained in Directive No. 4 of Cease and Desist Order No. 96-31.

The City failed to submit fourteen semi-annual status reports as summarized in Violation Table No. 4 (Appendix F).

G. The City of Escondido Failed to Comply with the Final Compliance Date Contained in Directive No. 2 of Cease and Desist Order No. 96-31.

The City failed to complete implementation of measures to terminate all unauthorized discharges to Escondido Creek and tributaries thereto by June 16, 2003 as summarized in Violation Table No. 5 (Appendix G).

H. The City of Escondido Failed to Comply with the Reporting Requirement Contained in Directive No. 2 of Addendum No. 1 to Cease and Desist Order No. 96-31.

The City submitted the final compliance report one hundred thirty eight days late as reflected in Violation Table No. 6 (Appendix H).

HARRF Reclamation Order No. 93-70

I. The City of Escondido Violated Effluent Limitations Contained in Discharge Specification B.1 of Order No. 93-70

Between January 9, 2005 and October 2, 2005, the City violated the Daily Average turbidity and Daily Maximum and 12-Month Average manganese effluent limitations prescribed in Order No. 93-70 sixteen times (16) as summarized in Violation Table No. 7 (Appendix I).

VI. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY

A. Factors to be Considered When Determining Administrative Civil Liability

The Regional Board has elected to consider the factors required to be determined for discretionary civil penalties as described in California Water Code (CWC) §13327 and §13385(e) to determine if the imposition of mandatory minimum penalties is appropriate for the allegations addressed in sections V.A, V.B, and V.D of this report, and in determining whether either of the exemptions associated with single operational upset or a third party defense is appropriate with regards to allegation V.A.. These factors include:

- The nature, circumstance, extent and gravity of the violation;
- Whether the discharge is susceptible to cleanup or abatement;
- The degree of toxicity of the discharge;
- The ability to pay;
- The effect on the ability to continue in business;
- Voluntary cleanup efforts undertaken;
- Prior history of violation;
- Degree of culpability;
- Economic benefit or savings, if any, resulting from the violation; and

- Other matters that justice may require.

The following is a detailed analysis of each factor as it applies to each allegation:

A.1. The City of Escondido Violated Effluent Limitations Contained in Discharge Specification B.1.a. of Order No. 99-72

A.1.a. Nature, Circumstance, Extent, and Gravity of the Violations

The City reported 393 carbonaceous oxygen demand and total suspended solids violations between May 3, 2004 and August 16, 2004. The City has submitted insufficient evidence to substantiate its claim that the violations were the result of the discharge of a toxic substance into the sewer system by a third party. The City failed to exercise due care and foresight by its continued reliance on a hand held dissolved oxygen meter that by design was not appropriate for the low dissolved oxygen levels routinely encountered at the HARRF. The City's actions extended the period of noncompliance with the applicable effluent limitations, thereby negating any justification for reducing the violations recorded over the first thirty days to a single violation as provided in CWC §13385(f)(2)(A).

The Regional Board adopted Order No. 99-72, *NPDES NO. CA0107981, Waste Discharge Requirements for the City of Escondido, Hale Avenue Resource Recovery Facility, Discharge to the Pacific Ocean via the Escondido Land Outfall and the San Elijo Ocean Outfall* on November 10, 1999, prescribing effluent limitations for the City's discharge of up to 16.5 MGD of secondary treated effluent to the Pacific Ocean via the Escondido Land Outfall and the San Elijo Ocean Outfall (Appendix J). The May, June, July and August 2004 monthly monitoring reports submitted to the Regional Board by the City reflect the violations of the Daily Maximum, Weekly Average, Monthly Average total suspended solids and carbonaceous oxygen demand effluent limitations and the 30-Day Average Percent Removal carbonaceous oxygen demand effluent limitation prescribed in Order No. 99-72 (Appendix K).

During the months of May and June 2004, the HARRF experienced a problem with the biological treatment process that resulted in the violations. These violations are subject to MMPs under CWC section 13385(h) and (i).

The City does not contest the fact that the violations occurred. The City claims the 393 effluent limitation violations were the intentional act of a third party. CWC section 13385(j)(1)(C) provides that MMPs do not apply to violations occurring as a result of an intentional act of a third party, if the effects could not have been prevented or avoided by the exercise of due care or foresight. This is an important defense in that the Water Code contains an exemption from MMPs if the violations were caused by a third party and beyond the reasonable control of the discharger. Furthermore, the Water Code also provides for a reduction of the penalty if the violations were the result of a single operation upset not to exceed 30 days and meeting certain criteria established in the Water Code. In this argument, the City bears the burden of proving that the exceptions in CWC section 13385(j)(1) relieve it of liability for violations that are subject to MMPs.

On February 15, 2005, the Regional Board issued Investigative Order No. R9-2005-0077 requesting information from the City related the effluent limitation violations (Appendix L). In response, the City submitted, *Hale Avenue Resource Recovery Facility Required Technical Investigation, Order No. R9-2005-0077* (Appendix M). This is the only information submitted by the City to date, to support a third party or single operational upset defense.

Boris Trgovcich with the State Board's Enforcement Unit, supported the Regional Board's investigation of the HARRF effluent limitation violations. On January 5, 6, and 20, 2005, Mr. Trogovcich and the Regional Board reviewed the HARRF records and interviewed City staff. Mr. Trgovcich's findings are contained in a report titled, *Evaluation of Treatment Plant Operation and Potential Causes of Treatment Plant Effluent Limitation Violations (April to June 2004) for the City of Escondido, Hale Avenue Resource Recovery Facility*, dated April 7, 2005 (Appendix N).

Based on information provided by the City during the file review, and results of sampling by the City from two segments of the collection system, it appears that elevated levels of chemicals may have entered certain segments of the City's sewage collection system during the months of May and June 2004. However, there is no evidence that these elevated levels caused the plant violations.

The file review did reveal that prior to and during the violation period, operators at the HARRF experienced problems with low dissolved oxygen in at least two of the five aeration basins. The low dissolved oxygen concentrations appear to be due to a combination of factors including faulty dissolved oxygen probes in the aeration basins and high concentrations of sulfides in the influent. This problem was likely compounded by erroneous readings obtained by one of the portable back up dissolved oxygen meters that were used by plant operators. This particular meter does not accurately read the unusually low dissolved oxygen concentrations (0.2-0.5 mg/L) often encountered in the HARRF aeration basins, unless special calibration procedures or a different membrane is used. Nevertheless, it is the meter that was used most frequently by operations staff. Furthermore, it appears the City's initial operational control responses, which was to decrease the air supply to the aeration basins, increasing sludge wasting over a long period of time, and maintaining the constant sludge return rate as the solids inventory in the aeration basins was decreasing, was not helpful in responding to the failing performance of the aeration basins. These actions likely exacerbated and prolonged the poor condition of the aeration basins longer than necessary.

The length of the violation period (three months) is inconsistent with the single operation upset (which is typically a short-lived event) or the speculation of a toxic load entering the plant and killing off the aerobic microbial population in a short time span. It is more likely the violations were caused by operational problems, which the operators did not immediately recognize. The higher-than-usual concentrations of potentially harmful pollutants in the influent to the treatment plant during this time period could have made the conditions worse, however, they were not found in concentrations that would have otherwise adversely impacted the treatment system.

Although the City maintains an exceptionally high quality of process control data at the HARRF and runs a sophisticated in-house laboratory, the specific events and conditions during the period of plant upset were poorly documented.

The City was slow to respond and investigate any source(s) of the potentially illegal discharge(s) into the sewage collection system after it attributed the effluent limitation violations to a toxic load entering the treatment plant.

The following are the main points of the City's defense, followed by a detailed Regional Board analysis.

(1) Sudden Decrease in Dissolved Oxygen Demand

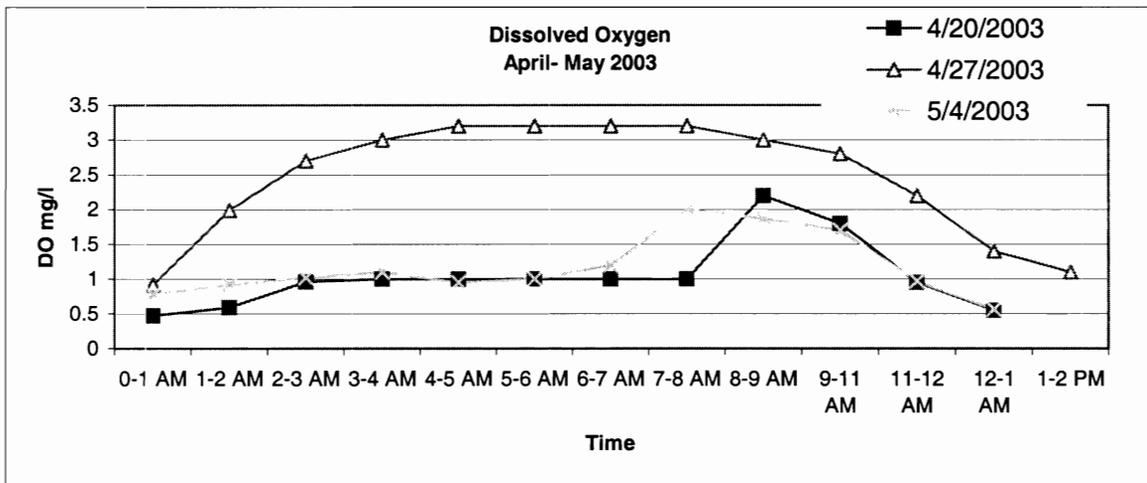
Argument in favor: The City claims that a sudden decrease in dissolved oxygen demand in all five aeration basins, accompanied by a decrease in the higher life form organisms in the treatment process occurred on April 17, 2004. The City supports its conclusion that one or more toxic substances was likely discharged into the sewer system based on these observations (Appendix M, pages 2 and 3).

The City further reports that while the microorganism population recovered throughout the following week, another decrease in dissolved oxygen demand during the early morning hours of April 24, 2004 resulted in another decrease in the higher organism population and a third decrease in dissolved oxygen demand on May 1, 2004 severely impacted the treatment process resulting the reported violations (Appendix M, page 3).

Argument against: While the City claims that dissolved oxygen levels rose in all five aeration basins during three consecutive Saturdays (April 17, April 24, May 1), process control data contradicts the City's argument. Data shows that dissolved oxygen levels in three of five basins were at or near target levels (Appendix N, Attachment 6 and 7). If a toxic discharge had entered the plant, it would be anticipated that all basins would be similarly affected based on the configuration of the HARRF (wastewater should be distributed evenly into each aeration basin from the primary clarifiers rather than wastewater entering one aeration basin and then passing through the remaining basins). The widely varying dissolved oxygen data presented in the HARRF process control data indicates that, prior to and during the violation period, operators did not have adequate control of the dissolved oxygen concentration in some of the aeration basins.

The City submitted a graphical representations of the dissolved oxygen values recorded on the three Saturdays in question, and compared them to February 2004, indicating that the marked contrast to the normal average daily dissolved oxygen level in any given month further documents toxic impacts on the biological treatment process through the increased levels of residual dissolved oxygen in the activated sludge. (Appendix M, pages 6 and 7).

The following graphical representation of the dissolved oxygen approximately one year prior to 2004 incident (as recorded on April 20, 27 and May 5, 2003) indicates that the average dissolved oxygen values were far greater in 2003 than on any of the three Saturdays in 2004. It should be noted that the City reported no effluent limitation violations during or after the 2003 dates depicted in the graphs below:



If a toxic substance entered the treatment process, all basins should have been similarly affected, but were not. The length of the violation period (three months) is also inconsistent with a single operational upset, which is typically short-lived. In general, a wastewater treatment exposed to a toxic load should be able to recover and reach normal operational conditions in two and three weeks. The long duration of the alleged upset is more consistent with operational control problems.

(2) Toxic Constituents Found During Monitoring

Argument in Favor: The City reports that it began monitoring for toxic pollutants in the Rancho Bernardo and Escondido main sewer lines leading to the HARRF on April 30, a day before the final drop in dissolved oxygen demand was reported (Appendix M, page 7). The City also monitored the HARRF influent, and centrifuge sludge cake during the violation period. The City identified acetone, total recoverable petroleum hydrocarbons, dichloromethane (methylene chloride), methyl ethyl ketone (MEK) and copper as atypical findings (Appendix

M, Table 1, page 21).

The City claims that the introduction of these types of toxic constituents into the biological treatment process would overwhelm the aerobic microorganisms and allow anaerobic microorganisms to dominate causing septic conditions in the aeration basins resulting in elevated TSS and CBOD levels (Appendix M, page 7).

- (3) Argument against:** Because flow measurements were not taken, or even estimated, it is not feasible to estimate the diluted concentrations in the combined influent or the potential impact on the plant's performance.

All sample results of combined influent submitted by the City were well within permit limits. Many of the spikes reported by the City were detected during the June 21-23 sampling event, when the plant appeared to be recovering. Furthermore, based on concentration of methylene chloride on May 2, 2004, there appears to be significant dilution based on sewer line data (68.6 ug/L) and HARRF influent data (39.6 ug/L) which lessens the likelihood that anything detected in the City's monitoring efforts severely affected the treatment plant operation.

The City identifies methylene chloride as a constituent found in excessive amounts in the trunk line servicing The Iron Factory. The City reports levels up to 68.6 ug/L and suspects it as a contributor to the treatment plant failure (Appendix M, page 11). Order No. 99-72 contains an effluent limitation for methylene chloride of 99,000 ug/L, which makes it highly unlikely that concentrations found in the sewer lines or the HARRF influent had any adverse affect on treatment plant operation. In addition, the State Board obtained documentation that methylene chloride acts as food for microorganisms and has no averse affects on activated sludge at concentrations over 100 times higher than those found in the HARRF influent. (Appendix N, page 16).

Samples of the plant influent taken by the City did not reveal any potentially toxic constituents in concentrations significantly higher than observed during the prior two years of operation.

The City reports that MEK in the centrifugal sludge cake was 3,200 ug/kg and that the last time the MEK levels were found to be this high was during two previous plant upsets in 1998

and 1999. By letter dated August 27, 1999, the City indicated that 177 total suspended solids and carbonaceous oxygen demand violations reported between July 21 and September 7, 1998 were the result of a slug of MEK discharged to the treatment plant (Appendix O). This discharge is represented by the City's Figure 7 (Appendix M, page 9) depicting an MEK value of approximately 55 mg/kg in the centrifuge sludge cake near August 10, 1998. However, the City's August 27, 1999 letter indicates that 213 total suspended solids and carbonaceous oxygen demand violations reported between November 5 and December 28, 1998 and June 16 and August 3, 1999 were caused by construction activities at the plant, not an MEK discharge, even though the City's data indicates that MEK levels in the centrifuge sludge cake in August 1999 was nearly twice that of May 2004.

Chemical Oxygen Demand and carbonaceous oxygen demand comparison tests conducted by the City during the period the City claims toxic loads were being discharged into the plant were consistent with historical correlations suggesting that the microorganisms in the plant influent and the primary clarifiers were still active and viable. These tests lend more credence to a dissolved oxygen problem in the aeration basins since they indicate that the microorganisms were alive upon entering the plant (Appendix N, page 13).

(4) Investigation of The Iron Factory (Illegal Sewer Discharges)

Argument in Favor: The Iron Factory began its golf club refinishing operation in the City of Escondido in 1985. From 1985 until December 1997, the facility discharged to the HARRF under an industrial waste permit. Since 1997 it is prohibited from discharging to the sewer under a zero discharge permit. On August 24, 2004 the City inspected The Iron Factory and discovered an illegal sewer connection. The City reports that several toxic materials are used at the facility including, cyanide, chromium, nickel, naphthalene, and methylene chloride for rechroming and refinishing golf clubs.

The City's enhanced monitoring program also revealed that The Iron Factory is located on a sewer line in which elevated levels of methylene chloride were detected. The City further reports that the owner of The Iron Factory admitted to discharging approximately five gallons of chrome plating waste and an unknown amount of caustic solution through the illegal connection several months before the inspection.

Argument against: While operating under a sewer discharge permit, a 1997 monitoring report from The Iron Factory indicated an average water use of 2,706 gallons of water per day at that time. A Fact Sheet submitted as part of the City's Annual Pretreatment Monitoring Report to the Regional Board indicates that The Iron Factory, as a zero discharge facility, employs three employees and has an average water usage of 100 gallons per day indicating that the facility generates an extremely small amount of waste when compared to the HARRF's total discharge flow rate of 16.5 million gallons per day. The City has provided no data to suggest what constituent(s) or at what quantity constituents discharged from The Iron Factory could affect the HARRF treatment process resulting in over three consecutive months of effluent limitation violations.

The owner of The Iron Factory was indicted by the Grand Jury on one count of felony illegal discharge of industrial wastes on April 1, 2005. The Iron Factory apparently also failed to produce Hazardous Material Manifests documenting cradle to grave custody of hazardous chemicals used on-site for rechroming and refinishing golf clubs. To date, the matter is pending in Federal Court.

(5) Defective Dissolved Oxygen Meter

Argument in favor: The City reports that the period of time the HARRF was experiencing operational difficulties may have been prolonged by the City's use of a defective dissolved oxygen meter. The City explains that operators were using a handheld dissolved oxygen meter to calibrate the basin probes in each of the five aeration basins on a daily basis during the violation period. If the basin probe did not read the same as the handheld unit, the basin probes were adjusted based on the handheld unit's readings. On July 28, 2004, the City discovered that the handheld units were inaccurate at low dissolved oxygen levels similar to levels frequently recorded at the HARRF. Because of this inaccuracy, the handheld unit was registering levels of dissolved oxygen adequate for the treatment process even though very little, if any, oxygen may have been present. Also, the City reports that all of the five basins dissolved oxygen probes were replaced between April 29 and July 27, 2004, scheduled prior to the violation period because the manufacture no longer supported the probes making it difficult to obtain spare parts (Appendix M, pages 12 and 13).

Argument Against: The City states, “It is possible that the duration of the upset may have been prolonged by a defective dissolved oxygen meter.” (Appendix M, page 12). However, the Operation Manual for the YSI 55 handheld meter (Appendix N, Attachment 8) states that when data is collected at dissolved oxygen levels below 20% air saturation, the low signal current resulting from the use of the standard membranes tend to magnify the probe’s inherent constant background signal, which would yield a dissolved oxygen reading higher than was actually present. In addition, the YSI 55 meter has an accuracy rating of +/- .3 mg/L. With the HARRF’s low target dissolved oxygen level of .75 mg/L, process control data indicates that dissolved oxygen could have been completely depleted on numerous occasions.

The City was using a dissolved oxygen meter that was inappropriate for normal operating conditions at the HARRF. The meter was not defective, and operated exactly as the operation manual stated it would under the conditions present at the HARRF. Using this meter to calibrate the basin’s probes resulted in the City depleting the oxygen in the aeration basins by reducing the airflow when the basin probes were indicating that oxygen levels were within or near the target range. This conclusion is supported by the City’s chemical oxygen demand/carbonaceous oxygen demand comparison tests indicating that organisms entering the plant were alive upon arrival and dying off after entering the aeration basins.

Even though the HARRF was experiencing severe treatment problems, the City proceeded with replacing the aeration basin probes, as previously scheduled. The City, in its technical report, stated that the dissolved oxygen probes were scheduled to be replaced prior to the violation period because the manufacture was no longer supporting them and was no longer supplying spare parts. The City did not report that the probes were failing to report accurately and have based a large portion of their third party defense on oxygen data supplied by the probes prior to their replacement. The replacement project required the City to rely primarily on the handheld meters for dissolved oxygen readings in the aeration basins. While the City believes that using an inappropriate oxygen meter for the HARRF may have prolonged the violation period, the record indicates that it could have entirely caused the failure of the activated sludge treatment process.

**(6) Additional Operational Concerns at the HARRF
Occurrence of Sulfides in Influent:**

Prior to and during the violation period, high levels of sulfides were detected in the plant influent. HARRF logbooks indicate that sulfide control is an ongoing concern. Operators routinely add bleach, chlorine, ferric chloride and enzyme products to the influent to control sulfides. On June 16, 2004, chlorine residual in the primary effluent averaged 1.1 mg/L through the four clarifiers and was 2.2 mg/L in clarifier #4. Chlorine residual of 2 mg/L is a common target for plant effluent requiring disinfection, which would suggest that residuals as high as 2.2 mg/L in the primary clarifier, accompanied with the low dissolved oxygen concentrations in the aeration basins could have a disastrous effect on the microbial population at the HARRF.

The City's response to their perceived toxic load scenario was to increase sludge wasting and decrease air supply to the aeration basins. This is contrary to standard operating procedures for wastewater treatment plants, *Operation of Wastewater Treatment Plants*, which recommends that sludge wasting should be stopped immediately and all available solids returned to the aerator. The City also did not follow standard protocol for sampling during this time period. If an intermittent or continuous toxic load was suspected, investigative sampling should have been intensified, but was not. The City did not initiate investigative sampling procedures until about April 29th; almost two weeks after the City first suspected that a toxic load entered the plant. Pretreatment staff was not notified until May 5, when a more cohesive sampling strategy was initiated.

Based on the long term nature of the violations and supported by data collected at the HARRF, the Regional Board concludes that at a minimum, a majority of the effluent limitation violations were caused by operational problems at the HARRF relating to oxygen deficiency in the aeration basins due largely to the use of a handheld oxygen meter that is inappropriate for normal operating conditions at the HARRF. This conclusion is supported by the lack of any sampling data that can substantiate a toxic load theory, the COD:CBOD testing that confirms influent entering the HARRF during the alleged discharges times revealed that microorganisms entering the plant were viable, historical dissolved oxygen data that disputes the City's claim that unusual sporadic spikes in available dissolved oxygen in the aeration basins were

indicative of a toxic load that lead to the effluent limitation violations.

Because the a majority, if not all, of the violations could have been avoided by the exercise of due care or foresight, the City does not satisfy the criteria to justify the exception from mandatory minimum penalties per by CWC §13385(h) and (i) for either third party defense or operational upset. Consequently, all 393 effluent limitation violations are subject to MMPs.

A.1.b. Susceptibility to Cleanup and Abatement

A discharge of secondary effluent to the Pacific Ocean is not susceptible to cleanup and abatement.

A.1.c. Degree of Toxicity

A discharge of secondary effluent to the Pacific Ocean in excess of the carbonaceous oxygen demand and total suspended solids effluent limitations is not considered toxic.

A.1.d. Ability to Pay and Effect on Ability to Continue in Business

At this time, the Regional Board has no information that the City is unable to pay the proposed liability or how payment of the proposed liability would affect its ability to provide required services. While it is not anticipated that the payment of the maximum administrative civil liability for violations cited in Complaint No. R9-2005-0265 would pose a significant financial hardship; the City has the principle burden of establishing a claim of its inability to pay.

A.1.e. Voluntary Cleanup Efforts Undertaken

This factor is not applicable to this violation.

A.1.f. Prior History of Violations

(1) Effluent Limitation Violations

Between July 21 and September 7, 1998, the City reported 177 carbonaceous oxygen demand and total suspended solids violations at the HARRF. The City attributed the violations to the discharge of a slug of MEK from an unknown third party. The City provided the Regional Board with no information on their activities to locate the alleged illegal discharge, and did

not identify an offending party. An in-depth investigation of the discharge violations was not conducted by the Regional Board therefore it is unknown if similar operational problems were occurring at the time. No enforcement action was taken by the Regional Board for these violations.

An additional 213 carbonaceous oxygen demand and total suspended solids effluent limitation violations were reported by the City between November 5 and December 28, 1998, and again between June 16 and August 3, 1999. The City attributed these violations to operational difficulties during a major construction project, although in the City's recent response to investigative Order No. R9-2005-0077, the City now attributes the violations to another slug of MEK discharged by an unknown third party. No enforcement action was initiated by the Regional Board against the City for these reported violations.

The Regional Board assessed a \$3,000 mandatory minimum penalty against the City for one TSS violation on July 27, 2000.

(2) Secondary Effluent Discharges to Escondido Creek

On July 29, 1985, the Regional Board issued Time Schedule Order No. 85-72, *An Order for Issuance of a Time Schedule for the City of Escondido Hale Avenue Wastewater Treatment Facility, San Diego County*, in response to numerous secondary effluent spills from the Escondido Land Outfall at Manhole No. 75, to Escondido Creek and the San Elijo Lagoon (Appendix P). The time schedule order required the City to submit an engineering report addressing the potential for wastewater bypasses or overflows from the Escondido Land Outfall due to capacity limitations in the San Elijo Ocean Outfall.

On June 13, 1996, the Regional Board adopted Cease and Desist Order No. 96-31 requiring the City to terminate all discharges to Escondido Creek and its tributaries (Appendix Q). The Order was issued in response to two secondary effluent discharges to Escondido Creek from the HARRF during extreme wet weather conditions that caused capacity limitations in the San Elijo Ocean Outfall. In response, the City elected to pursue a wet weather discharge rather than expansion of the ocean outfall. The City's compliance with the Cease and Desist Order and the wet weather discharge NPDES permit are a component of this enforcement action as discussed

in sections V.A.4, V.A.5, V.A.6, V.A.7, and V.A.8 of this technical analysis.

A 3,000 gallon spill from the Escondido Land Outfall, at Manhole No. 74, occurred on January 1, 2004. The City attributes that spill to a power outage at the HARRF in addition to City staff being untrained on microturbines (associated with power generation) that had recently been installed. The City reported that none of the secondary effluent discharged reached receiving waters.

A 5,000 gallon spill from the Escondido Land Outfall occurred on March 21, 2004 due to debris in an air-vac float. The spill resulted in the closure and posting of San Elijo Lagoon and San Elijo State Beach near the mouth of the lagoon. This discharge did not occur in the vicinity of Manhole No. 74. A third discharge from the Escondido Land Outfall is the subject of enforcement action discussed in section 2.4 of this technical analysis.

A.1.g. Degree of Culpability

Based on the findings of the State Board's evaluation of the treatment plant operation, and the Regional Board's conclusion that the operational control problems caused most, if not all of the effluent limitations, the City bears a high degree of culpability for the 393 effluent limitation violations.

A.1.h. Economic Benefit Resulting from the Violation

The Regional Board did not perform an economic benefit analysis for this enforcement action. However, it is anticipated that the mandatory minimum penalty associated with the 393 effluent limitation violations is greater than any economic benefit derived by the violations.

A.1.i. Other Matters that Justice May Require

The State and Regional Boards have spent 555 staff hours investigation and processing the enforcement actions detailed in this reports. At a rate of \$90 per hour, total staff time is \$50,000.

A.2. The City of Escondido Violated the Effluent Flow Limitation Contained in Prohibition A.1 of Order No. 99-72

A.2.a. Nature, Circumstance, Extent, and Gravity of the Violations

The City violated the effluent flow limitation of 16.5 million gallons per day prescribed in Order No. 99-72 forty-seven times in January, February and March 2005 as reflected in monthly monitoring reports submitted to the Regional Board (Appendix R). The significant increase in influent flow during wet weather conditions indicates that the City may have a serious problem with inflow and infiltration. In addition, the City had been operating the HARRF above seventy-five percent of the 16.5 MGD permitted flow rate (12.4 MGD) since at least November 1992.

The City attributed the violations to extreme wet weather events. During nine of the forty-seven days of flow violations, the City was also discharging tertiary treated wastewater to Escondido Creek.

Flow is a Group 1 pollutant in accordance with Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations. For purposes of calculating mandatory minimum penalties, none of the flow violations are classified as “serious violations. Therefore, these flow violations are subject to mandatory minimum penalties in accordance with CWC § 13385(i) as reflected in Violation Table No. 2 (Appendix B).

A.2.b. Susceptibility to Cleanup and Abatement

The discharge to the Pacific Ocean violated the effluent flow limitation and at times exceeded the capacity to discharge through the San Elijo Ocean Outfall (January 9-13 and February 22-25). It is feasible the City could have avoided or reduced the number of flow limitation violations, had more flow been diverted to Escondido Creek, provided the discharge would comply with the criteria for a wet weather discharge established in the permit.

A.2.c. Degree of Toxicity

The discharge of secondary effluent to the Pacific Ocean in excess of the effluent flow limitation is not considered toxic.

A.2.d. Ability to Pay and Effect on Ability to Continue in Business

See Section V.A.1.d.

A.2.e. Voluntary Cleanup Efforts Undertaken

This factor is not applicable to this violation.

A.2.f. Prior History of Violations

See section V.A.1.f.

A.2.g. Degree of Culpability

The City bears a high degree of culpability with regards to these violations because of its history of flow related violations. These violations, as well as the violations addressed in section V.A.3 and V.A.5 indicate that the City did not solve the flow related problems that the Regional Board attempted to previously resolve through the issuance of Cease and Desist Order No. 96-31.

A.2.h. Economic Benefit Resulting from the Violation

It is likely that the City has enjoyed an economic benefit from the postponement of either treatment plant expansion or flow control measures. However, an in-depth analysis of the economic benefit relating to the flow limitation violations has not been calculated.

A.2.i. Other Matters that Justice May Require

See section V.A.1.i.

A.3 The City of Escondido Discharged Secondary Effluent into Escondido Creek and San Elijo Lagoon in Violation of Prohibition A.1 of Order No. 99-72

A.3.a. Nature, Circumstance, Extent, and Gravity of the Violations

On February 27, 2005 the City reported a 73,500 gallon secondary effluent spill from Manhole No. 74 in the Escondido Land Outfall that discharged into Escondido Creek and San Elijo Lagoon (Appendix C). The City failed to properly reset the equalization pumps after a power outage at the HARRF. In

addition, the flow meter from the equalization basin was previously relocated to replace a malfunctioning influent flow meter, causing the spill to go undetected for several hours. The spill resulted in the overall flow to the Escondido Land Outfall to be over capacity.

The City's failure to exercise due care after the power outage resulted in a discharge to Escondido Creek and San Elijo Lagoon, which is listed on the State's List of "Impaired Water Bodies" [required by subdivision (d) of Clean Water Act Section 303, 33 USC 1313] for water quality impairments associated with excessive sediment, coliform and nutrient concentrations which affect the quality of water needed to sustain REC-1, REC-2, and aquatic life beneficial uses. Secondary effluent discharged from the HARRF is typically characterized by high levels of bacteria and biostimulating nutrients. Any discharge of secondary effluent to the San Elijo Lagoon would be expected to compound the bacteria and nutrient impairments.

A.3.b. Susceptibility to Cleanup and Abatement

The discharge of secondary effluent into Escondido Creek and San Elijo is not susceptible to cleanup or abatement.

A.3.c. Degree of Toxicity

The discharge of 73,500 gallons of secondary effluent to Escondido Creek and San Elijo Lagoon is not considered toxic.

A.3.d. Ability to Pay and Effect on Ability to Continue in Business

See section V.A.1.d.

A.3.e. Voluntary Cleanup Efforts Undertaken

Cleanup of the spill was not feasible, therefore this factor does not apply.

A.3.f. Prior History of Violations

See section V.A.1.f.

A.3.g. Degree of Culpability

Because the discharge was the result of operator error, the City bears a high degree of culpability for this violation.

A.3.h. Economic Benefit Resulting from the Violation

It is not anticipated that any economic benefit was enjoyed by the City as a result of this violation.

A.3.i. Other Matters that Justice May Require

See section V.A.1.i.

A.4. The City of Escondido Violated Effluent Limitations Contained in Discharge Specification B.1.d. and B.1.g. of Order No. R9-2003-0394

A.4.a. Nature, Circumstance, Extent, and Gravity of the Violations

On January 9, 2005 the City initiated its' first wet weather discharge pursuant to waste discharge requirements prescribed in Order No. R9-2003-0394 (Appendix S). Between January 9, 2005 and February 25, 2005, eleven effluent limitations were reported in monthly monitoring reports submitted to the Regional Board (Appendix T). The City attributed the nitrate, nitrite, and turbidity violations to higher influent flows entering the HARRF, which trigger the need for diversion to the wet weather discharge. The violations are all serious violations in accordance with CWC section 13385(h)(2) and are therefore subject to mandatory minimum penalties as described in Violation Table No. 3 (Appendix D).

On December 10, 2003, the Regional Board issued Order No. R9-2003-0394 prescribing waste discharge requirements to the City for the discharge of tertiary treated effluent to Escondido Creek, San Elijo Lagoon and the Pacific during extreme wet weather events. Order No. R9-2003-0394 superceded Order No. 98-10, issued on September 9, 1998. The City pursued the wet weather discharge permit as the preferred option to comply with Cease and Desist Order No. 96-31 which required the City to improve capacity in the San Elijo Ocean Outfall and cease secondary effluent wastewater spills that were discharged to Escondido Creek.

The wet weather permit authorizes the City to discharge up to 9.0 MGD of tertiary treated wastewater to Escondido Creek under the following wet weather conditions: (1) The discharge

to the San Elijo Ocean Outfall from the HARRF and San Elijo Water Pollution Control Facility exceeds the maximum capacity of the outfall; (2) All emergency in-plant storage has been used; (3) Stream flows in Escondido Creek exceed an average flow of 300 cubic feet per second and at no time are below 100 cubic feet per second during the discharge; (4) The mouth of the San Elijo Lagoon is open or the Regional Board Executive Officer approves otherwise; and (5) The discharge occurs between November 1 and April 30.

A.4.b. Susceptibility to Cleanup and Abatement

The cleanup and abatement of the wet weather discharge to Escondido Creek is not feasible.

A.4.c. Degree of Toxicity

The discharge of effluent to Escondido Creek and San Elijo Lagoon in violation of prescribed effluent limitations is not considered toxic.

A.4.d. Ability to Pay and Effect on Ability to Continue in Business

See Section V.A.1.d.

A.4.e. Voluntary Cleanup Efforts Undertaken

Cleanup of the discharge was not feasible, therefore this factor does not apply.

A.4.f. Prior History of Violations

See section V.A.1.f.

A.4.g. Degree of Culpability

The City attributes the majority of the violations to high influent flows entering the HARRF during extended wet weather conditions. However, this argument fails to recognize that the higher flow conditions at the HARRF is exactly what was anticipated when Order No. R9-2003-0394 was adopted. In fact, the wet weather permit authorizes discharge to Escondido Creek when flows are at or above 100 cubic feet per second, which generally occur during extended wet conditions.

The City speculates that the increase in flow caused minor changes in the pH of the influent causing the poly aluminum chloride filter aid used at the plant to either coagulate floc after the filters or shear floc in the filters, resulting in turbidity violations. Although the City noted its concern with its flocculating additive in the January 2005 Monthly Monitoring Report, no change in chemical additive was made when the second discharge was initiated six weeks later. The City's slow response in correcting the problems they attribute to the violations suggests a high degree of culpability with regard to these violations.

A.4.h. Economic Benefit Resulting from the Violation

It is not anticipated that the City enjoyed any economic benefit from these effluent limitation violations.

A.4.i. Other Matters that Justice May Required

See section V.A.1.i.

A.5. The City of Escondido Discharged Secondary Effluent into Escondido Creek and San Elijo Lagoon in Violation of Discharge Specification B.5 of Order No. R9-2003-0394

A.5.a. Nature, Circumstance, Extent, and Gravity of the Violations

Between 0930 hours on January 11 and 1700 hours on January 12, 2005, the City discharged 280,000 gallons of secondary effluent to Escondido Creek in violation of Order No. R9-2003-0394, which requires only highly treated (tertiary) effluent to be discharged (Appendix E). On February 8, 2005, the Regional Board required the City to submit a technical report regarding the wet weather discharge (Appendix U).

On February 28, 2005, the City submitted its response (Appendix V). The City reported that all available capacity at the HARRF was in use when the discharge occurred and that they were also discharging tertiary effluent to Escondido Creek when the secondary discharge occurred.

The secondary effluent discharged to Escondido Creek indicates that the City has failed to resolve its flow/capacity issues that were addressed by the Regional Board through the issuance of Cease and Desist Order No. 96-31.

A.5.b. Susceptibility to Cleanup and Abatement

A discharge of secondary effluent into Escondido Creek and San Elijo Lagoon is not susceptible to cleanup or abatement.

A.5.c. Degree of Toxicity

The discharge of 280,000 gallons of secondary effluent to Escondido Creek and San Elijo Lagoon, is not considered toxic.

A.5.d. Ability to Pay and Effect on Ability to Continue in Business

See section V.A.1.d.

A.5.e. Voluntary Cleanup Efforts Undertaken

Cleanup of the discharge of secondary effluent is not feasible, therefore this factor does not apply.

A.5.f. Prior History of Violations

See section V.A.1.f.

A.5.g. Degree of Culpability

The City received its wet weather discharge permit nearly seven years prior to its first use to discharge to Escondido Creek. The City was required by Cease and Desist Order No. 96-31 to implement measures to cease secondary discharges to Escondido Creek by June 16, 2003 because of past discharges.

In addition to the secondary discharge, the City also discharged tertiary effluent to Escondido Creek in violation of effluent limitations established in Order No. R9-2003-0394 as addressed in section 2.1.3. of this report. An additional violation of discharging when creek flows were less than 100 cubic feet per second was also recorded on January 13, 2005.

Because the secondary receiving water, San Elijo Lagoon, is a water body impaired by constituents found in treated sewage, the Regional Board imposed strict requirements on the live stream discharge. Not only did the City fail to meet the tertiary treatment standard required by the Order, the City discharged to the creek when stream flows were below 100 cubic feet per

second, and discharged tertiary effluent in violation of effluent limitations as discussed in section V.A.4. The City has a high degree of culpability with regard to this violation.

A.5.h. Economic Benefit Resulting from the Violation

The City likely realized some nominal economic benefit by failing to expend the necessary resources to ensure the ability to discharge up to 9.0 MGD of tertiary treated effluent to Escondido Creek that was in compliance with waste discharge requirements prior to the need to discharge. The proposed administrative civil liability for this violation should recover any economic gain realized by the City.

A.5.i. Other Matters that Justice May Require

See section V.A.1.i.

A.6. The City of Escondido Failed to Comply with Reporting Requirements Contained in Directive No. 4 of Cease and Desist Order No. 96-31.

A.6.a. Nature, Circumstance, Extent, and Gravity of the Violations

The Regional Board issued Cease and Desist Order No. 96-31 to the City on June 16, 1996 requiring the City to implement measures to cease discharges of secondary effluent from the HARRF to Escondido Creek. Directive No. 4 of Cease and Desist Order No. 96-31 required the City to submit semi-annual progress reports identifying and discussing all tasks undertaken by the City to achieve compliance with the Directives of the Order. The first semi-annual report was due by October 31, 1996. The City failed to submit any of the semi-annual status reports required under the Order.

The Regional Board notified the City by letter dated September 23, 2002, that no semi-annual reports had been received (Appendix W). On October 6, 2003, the Regional Board issued Notice of Violation (NOV) No. R9-2003-0380 again notifying the City of the reporting violations (Appendix X). The City responded to the NOV indicating that they had no valid reason for failing to submit the semi-annual reports (Appendix Y).

The Regional Board did not provide any notification to the City

regarding its' failure to comply with reporting requirements contained in Cease and Desist Order No. 96-31 until September 23, 2002. As a result, the Regional Board should reduce the liability for the first twelve reporting violations occurring before September 2002 to below the \$100 per day, which is the minimum liability for each day of violation as prescribed in CWC §13350(e)(1)(B). All reporting violations occurring after September 23, 2002, should be subject to the minimum \$100 per day penalty.

A.6.b. Susceptibility to Cleanup and Abatement

This factor does not apply to this reporting violation.

A.6.c. Degree of Toxicity

This factor does not apply to this reporting violation.

A.6.d. Ability to Pay and Effect on Ability to Continue in Business

See section V.A.1.d.

A.6.e. Voluntary Cleanup Efforts Undertaken

This factor does not apply to this reporting violation.

A.6.f. Prior History of Violations

See section V.A.1.f.

A.6.g. Degree of Culpability

Subsequent to issuance of Cease and Desist Order No. 96-31, the City experienced several changes in key personnel who were responsible for reporting to the Regional Board (Appendix Y). Because Regional Board did not provide timely notification to the City regarding the City's failure to comply with reporting requirements between July 1996 through August 2002, the City's degree of culpability relating to twelve of the fourteen reporting violations is decreased and justifies reducing the liability for those reporting violations to below the \$100 per day, which is the minimum liability for each day of violation as prescribed in CWC §13350(e)(1)(B). However, because the Regional Board notified the City twice after August 2002 that semi-annual reports were required, the City has an increased

degree of culpability for the remaining two reporting violations.

A.6.h. Economic Benefit Resulting from the Violation

The Regional Board does not anticipate that the City enjoyed any economic benefit from these reporting violations.

A.6.i. Other Matters that Justice May Require

See section V.A.1.i.

A.7. The City of Escondido Failed to Comply with the Final Compliance Date Contained in Directive No. 2 of Cease and Desist Order No. 96-31.

A.7.a. Nature, Circumstance, Extent, and Gravity of the Violations

On October 31, 2002, eleven days prior to the final compliance date prescribed in Cease and Desist Order No. 96-31, the City notified the Regional Board that they would not be able to meet the November 11, 2002 due date. The City requested an extension of the final compliance date to June 16, 2003 and the Regional Board granted the extension through the issuance of Addendum No. 1 to Cease and Desist Order No. 96-31 on February 5, 2003 (Appendix Z).

By letter dated November 10, 2003, the City notified the Regional Board that they had not complied with the final compliance date of June 16, 2003. The City requested that the final compliance date be extended to December 31, 2003 or that the Regional Board consider that the City had complied with the requirements of the Cease and Desist Order as of the date of the letter because the majority of the work necessary to achieve compliance had been completed (Appendix Y). The Regional Board did not extend the compliance date. The City's request came after the final compliance date had passed and after the Regional Board issued NOV No. R9-2003-0380.

The City did not notify the Regional Board when they attained complete compliance with Cease and Desist Order No. 96-31. As a result, for the purpose of calculating liability, the Regional Board has elected to use the date of the City's letter, November 10, 2003, as the final compliance date, understanding that the actual compliance date was sometime in the future. Using this

criterion, the Regional Board has calculated that the City was in violation of the final compliance date contained in Cease and Desist Order No. 96-31 for at least one hundred forty six days (146).

A.7.b. Susceptibility to Cleanup and Abatement

This factor does not apply to this reporting violation.

A.7.c. Degree of Toxicity

This factor does not apply to this reporting violation.

A.7.d. Ability to Pay and Effect on Ability to Continue in Business

See section V.A.1.d.

A.7.e. Voluntary Cleanup Efforts Undertaken

This factor is not applicable to this reporting violation.

A.7.f. Prior History of Violations

See section V.A.1.f.

A.7.g. Degree of Culpability

The City bears full responsibility for adhering to the final compliance date contained in Addendum No. 1 to Cease and Desist Order No. 96-31. The City has a high degree of culpability with regards to this violation.

A.7.h. Economic Benefit Resulting from the Violation

The Regional Board has not conducted an analysis of the economic benefit, if any, the City enjoyed as a result of this violation.

A.7.i. Other Matters that Justice May Require

See section V.A.1.i.

A.8. The City of Escondido Failed to Comply with Reporting Requirement Contained in Directive No. 2 of Addendum No. 1 to Cease and Desist Order No. 96-31.

A.8.a. Nature, Circumstance, Extent, and Gravity of the Violations

When the Regional Board extended the final compliance date through the adoption of Addendum No. 1 to Cease and Desist Order No. 96-31 on February 5, 2003, a new directive was added requiring the City to submit a final report by July 1, 2003 describing all steps taken to comply with the requirements of the original Order (Appendix Z). The Regional Board brought the addition of the final compliance report to the City's attention in the transmittal letter for Addendum No. 1 to Cease and Desist Order No. 96-31, dated February 11, 2003 (Appendix AA).

The City failed to submit a final report on the required due date. The Regional Board issued NOV R9-2003-0380 on October 6, 2003 (Appendix X). In its response to the NOV, received November 17, 2003 (Appendix Y), the City submitted most of the information required in the final report while indicating that final compliance had not been attained. Rather than extending the final compliance date to December 31, 2003 as the City requested, the Regional Board accepted the City's response as the final compliance report.

For purposes of calculating the liability, November 17, 2003, the date of receipt of the response to the NOV, will be used as the date the final report was submitted, because the City did provide a chronology of the activities undertaken by the City to implement the measures necessary to comply with Cease and Desist Order 96-31. Using this criterion, the City submitted the final compliance report one hundred and thirty eight (138) days late.

A.8.b. Susceptibility to Cleanup and Abatement

This factor does not apply to this reporting violation.

A.8.c. Degree of Toxicity

This factor does not apply to this reporting violation.

A.8.d. Ability to Pay and Effect on Ability to Continue in Business

See section V.A.1.d.

A.8.e. Voluntary Cleanup Efforts Undertaken

This factor does not apply to this reporting violation.

A.8.f. Prior History of Violations

See section V.A.1.f.

A.8.g. Degree of Culpability

Addendum No. 1 to Cease and Desist Order No. 96-31 was adopted by the Regional Board on February 5, 2003. Addendum No. 1 added a directive requiring the City to submit a final report to the Regional Board by July 1, 2003. The City requested the issuance of the addendum to extend the final compliance date. It is reasonable to conclude that the City was aware that the addendum contained a directive requiring the submittal of a final compliance report. As a result, the City bears a high degree of culpability for this violation.

A.8.h. Economic Benefit Resulting from the Violation

The Regional Board does not anticipate that the City enjoyed any economic benefit from these reporting violations.

A.8.i. Other Matters that Justice May Require

See section V.A.1.i.

A.9. The City of Escondido Violated Effluent Limitations Contained in Discharge Specification B.1 of Order No. 93-70

A.9.a. Nature, Circumstance, Extent, and Gravity of the Violations

The City initiated the distribution and discharge of recycled water pursuant to requirements contained in Order No. 93-70, *Waste Discharge Requirements for the City of Escondido, Hale Avenue Regional Reclamation Facility, San Diego County* on September 17, 2005 (Appendix BB).

Between January 9, 2005 and March 7, 2005, the City reported seven violations of the daily average turbidity effluent limitation (Appendix CC). The City attributed the violations to a change in the wastewater makeup due to the increased amount of rainwater during wet weather conditions. Since the conclusion of the wet weather season, the City has not reported additional turbidity violations.

Between April 11, 2005 and October 2, 2005, the City reported seven violations of the daily maximum and two violations of the 12-month average manganese effluent limitations (Appendix DD). The City attributes these violations to the use of ferrous chloride at the Escondido-Vista Water Treatment Plant as a coagulant for local water from Lake Wohlford. The City has reported that the water treatment plant will be changing to ferric sulfate as a coagulant by the end of November 2005. Initial testing indicates that using ferric sulfate will lower the manganese levels arriving at the HARRF, but will not sustain levels below the 0.06 Daily Maximum effluent limitation. The City has requested that the Regional Board amend the manganese effluent limitations in Order No. 93-70 to accommodate their discharge rather than pursuing the necessary steps to discharge in compliance with the existing waste discharge requirements.

The water quality objective for manganese in the groundwater in the Escondido Hydrologic Area is 0.05 mg/L and the effluent limitation prescribed in Order No. 93-70 is 0.06 mg/L. The City has reported manganese values between 0.089 mg/L and 0.127 mg/L.

A.9.b Susceptibility to Cleanup and Abatement

When violating the turbidity effluent limitation, a parameter that is continuously read, the City was aware that effluent was not meeting the instantaneous maximum effluent limitation and at some point in time would not meet the daily average effluent limitation. The City could have discontinued discharging or diverted the poorly treated effluent to the ocean outfall for proper disposal.

A.9.c Degree of Toxicity

The effluent limitation violations described in this enforcement action are not considered toxic.

A.9.d. Ability to Pay and Effect on Ability to Continue in Business

See section V.A.1.d.

A.9.e. Voluntary Cleanup Efforts Undertaken

This factor does not apply to this violation.

A.9.f. Prior History of Violations

See section V.A.1.f.

A.9.g. Degree of Culpability

The City bears a high degree of culpability for the decision to distribute recycled water in violation of effluent limitations rather than returning the flow to the ocean outfall where it could be discharge in compliance with waste discharge requirements. It is assumed that the City elected to recycle water during a period with frequent heavy rains because of capacity problems at the HARRF.

A.9.h. Economic Benefit Resulting from the Violation

It is anticipated that the City enjoyed a nominal economic benefit by choosing to sell recycled water in violation of effluent limitations rather than discharge the wastewater to the ocean outfall to avoid the violations; however, the Regional Board did not conduct an analysis of the economic benefit associated with these violations.

A.9.i. Other Matters that Justice May Require

See section V.A.1.i.

VI. CIVIL LIABILITY

Pursuant to CWC section 13385 the maximum civil liability that the Regional Board may assess is (a) ten thousand dollars (\$10,000) per day of violation (per violation); and (b) ten dollars (\$10) for every gallon discharged, over one thousand gallons discharged, that was not cleaned up. CWC section 13385(e) requires that, when pursuing civil liability under CWC section 13385, "At a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation."

Pursuant to CWC section 13350, the maximum civil liability that the Regional Board may assess is either \$5,000 per day of violation (per violation) or up to ten dollars (\$10) per gallon of waste discharged.

A. \$1,170,000 in Mandatory Minimum Penalties is Appropriate Civil Liability for Violations of Effluent Limitations Contained in Discharge Specification B.1.a. of Order No. 99-72 (Subject to CWC section 13385)

Proposed

Consideration of the factors described in CWC section 13385(d), supports imposition of mandatory minimum penalties of one million one hundred seventy thousand dollars (\$1,170,000) for the 393 reported effluent limitation violations based on \$3,000 for each serious violations and \$3,000 for each non-serious violations that occurred four or more times in six consecutive months as described in Appendix A.

Maximum

The 393 effluent limitation violations addressed in this enforcement action are subject to a ten thousand dollar per day, per violation penalty. Therefore, the maximum civil liability which could be imposed by the Regional Board for this measure of liability is three million nine hundred thirty thousand dollars (\$3,930,000).

Based on the average monthly flow rate for the months violations occurred (13.7 MDG in May 2004, 13.8 MGD in June 2004, 13.6 MGD in July 2004, and 14.4 MGD in August 2004) and the number of days for which violations were reported (93 total), the maximum per gallon civil liability which could be imposed by the Regional Board for this measure of liability is twelve trillion, eight hundred twenty nine million seventy thousand dollars (\$12,829,070,000).

The total maximum civil liability that could be imposed by this Regional Board for these effluent limitation violations is twelve trillion, eight hundred thirty three million dollars (\$12,833,000,000).

B. \$132,000 in Mandatory Minimum Penalties is Appropriate Civil Liability for Violations of the Effluent Flow Limitation Contained in Prohibition A.5 of Order No. 99-72 (Subject to CWC section 13385)

Proposed

Consideration of the factors described in CWC section 13385(d) supports imposition of mandatory minimum penalties of one hundred thirty two thousand dollars (\$132,000) for the forty-seven effluent flow limitation violations based on \$3,000 for each non-serious violations that occurred four or more times in six consecutive months as described in Appendix B.

Maximum

The City discharged effluent in excess of the effluent limitation of 16.5 MGD on forty-seven days. Therefore, the maximum civil liability which could be imposed by the Regional Board for this measure of liability is four hundred seventy thousand dollars (\$470,000).

The City discharged 71,853,000 gallons of secondary effluent in excess of its effluent flow limitation over forty-seven days (minus 1,000 gallons each day of discharge). The maximum per gallon civil liability which could be imposed by the Regional Board for this measure of liability is seven hundred eighteen million five hundred thirty thousand dollars (\$718,530,000).

The total civil liability that could be imposed by the Regional Board for these effluent flow limitation violations is seven hundred nineteen million dollars (\$719,000,000).

C. \$82,500 in Civil Liability is Appropriate for Violations of Prohibition A.1 of Order No. 99-72 (Subject to CWC section 13385)

Proposed

Consideration of the factors contained in CWC section 13385(d) support the imposition of civil liability of eighty three thousand five hundred dollars (\$82,500) for this violation based on ten thousand dollars (\$10,000) for one day of discharge and one dollar (\$1) per gallon for 72,500 gallons discharged and not cleaned up for a total of seventy two thousand five hundred dollars (\$72,500).

Maximum

The secondary effluent discharge occurred over a period of one day. Therefore, the maximum civil liability, which could be imposed by the Regional Board for this measure of liability, is ten thousand dollars (\$10,000).

The volume of secondary effluent above 1,000 gallons, which was discharged but not cleaned up, as reported by the City, was 72,500 gallons. Therefore, the maximum civil liability that could be imposed by the Regional Board for this measure of liability is seven hundred twenty five thousand dollars (\$725,000).

The total maximum civil liability that could be imposed by this Regional Board for this violation is seven hundred thirty five thousand dollars (\$735,000).

D. \$33,000 in Mandatory Minimum Penalties is Appropriate Civil Liability for Violations of Effluent Limitations Contained in Discharge Specification B.1.d and B.1.g. of Order No. R9-2003-0394 (Subject to CWC section 13385)

Proposed

Consideration of the factors contained in CWC section 13385(d) supports imposition of mandatory minimum penalties of thirty three thousand dollars (\$33,000) for the eleven reported effluent limitations based on \$3,000 for each serious violation as described in Appendix D.

Maximum

The City discharged effluent in excess of the daily average turbidity, daily maximum nitrate, and daily maximum nitrite effluent limitations on eleven days. Therefore, the maximum civil liability which could be imposed by the Regional Board for this measure of liability under CWC section 13385(c)(1) is one hundred ten thousand dollars (\$110,000).

The City discharged 342,000,000 of tertiary effluent in violation of effluent limitations during the nine days of reported violations (minus 1000 gallons each day). Therefore, the maximum civil liability that could be imposed by the Regional Board for this measure of liability is three trillion four hundred twenty million dollars (\$3,420,000,000).

The total maximum civil liability that could be imposed by the Regional Board for these effluent limitation violations is three trillion, four hundred twenty million one hundred ten thousand dollars (\$3,420,110,000).

E. \$299,000 in Civil Liability is Appropriate for Violation of Discharge Specification B.5 of Order No. R9-2003-0394 (Subject to CWC §13385)

Proposed

Consideration of the factors described in CWC §13385(d) supports imposition of civil liability of two hundred ninety nine thousand dollars (\$299,000) for this violation based on ten thousand dollars (\$10,000) for two days of discharge, and one dollar per gallon (\$1) for the 279,000 discharged and not cleaned up (minus 1,000 gallons).

Maximum

The secondary effluent discharge occurred over a period of two days. Therefore, the maximum civil liability that could be imposed by the Regional Board for this measure of liability is twenty thousand dollars (\$20,000).

The volume of secondary effluent above 1,000 gallons, which was discharged but not cleaned up, as reported by the City, was 279,000 gallons. Therefore, the maximum civil liability that could be imposed by the Regional Board for this

measure of liability is two million seven hundred ninety thousand dollars (\$2,790,000).

The total maximum civil liability that could be imposed by the Regional Board for this violation is two million eight hundred ten thousand dollars (\$2,810,000).

F. \$47,450 is Appropriate Civil Liability for Violations of Directive No. 4 of Cease and Desist Order No. 96-31 (Subject to CWC §13350)

Proposed

The Regional Board did not provide timely notification to the City regarding the City's failure to comply with reporting requirements contained in Cease and Desist Order No. 96-31 until September 23, 2002, after twelve semi-annual reports had become delinquent. This justifies reducing the liability for the first twelve reporting violations occurring before September 23, 2003 to below the \$100 per day, which is the minimum liability for each day of violation as prescribed in CWC §13350(e)(1)(B). Because the City does bear responsibility for complying with reporting requirements of an enforcement order issued by the Regional Board, the proposed civil liability for the first twelve semi-annual status reports not submitted is five dollars (\$5) per day of violation for two thousand one hundred and ninety one days, for a total of ten thousand nine hundred fifty dollars (\$10,950).

Because the Regional Board did notify the City that semi-annual status reports were required by letter dated September 23, 2002 and again when Addendum No. 1 to Cease and Desist Order No. 96-31 was adopted on February 5, 2003, the minimum liability required under CWC §13350(e)(1)(B) is appropriate for the semi-annual status report for October-March 2003. Therefore, the proposed civil liability in the amount of one hundred dollars (\$100) per day of violation for three hundred sixty five days, for a total of thirty six thousand five hundred dollars (\$36,500) for the April-September 2020 and October-March 2003 semi-annual status reports.

Based on consideration of the factors described in CWC §13327, the Regional Board proposes civil liability in the amount of forty seven thousand four hundred fifty dollars (\$47,450) as described in Appendix F.

Maximum

The City failed to submit fourteen semi-annual status reports for 2556 total days of violation. Based on the statutory maximum of \$5,000 per day of violation, the maximum civil liability that could be imposed by the Regional Board for this measure of liability is twelve million two hundred seventy eight thousand dollars (\$12,780,000).

G. \$14,600 in Civil Liability is Appropriate for Violation of Directive No. 2 of Cease and Desist Order No. 96-31 (Subject to CWC §13350)

Proposed

Consideration of the factors contained in CWC §13327 supports the imposition of the minimum liability required under CWC §13350(e)(1)(B) for the City's failure to comply with the final compliance date contained in Addendum No. 1 to Cease and Desist Order No. 96-31. Therefore, the proposed civil liability is hundred dollars (\$100) for each of the one hundred forty six days (146) of violation as described in Appendix G, for a total of fourteen thousand six hundred dollars (\$14,600).

Maximum

The City complied with the final compliance date contained in Directive No. 2 of Addendum No. 1 to Cease and Desist Order No. 96-31 146 days late. Based on the statutory maximum of \$5,000 per day of violation, the maximum civil liability that could be imposed by the Regional Board for this violation is seven hundred thirty thousand dollars (\$730,000).

H. \$13,800 in Civil Liability is Appropriate for Violation of Directive No. 2 of Addendum No. 1 to Cease and Desist Order No. 96-31 (Subject to CWC §13350)

Proposed

Consideration of the factors contained in CWC §13327 supports imposition of civil liability at the minimum liability required under CWC §13350(e)(1)(B) of one hundred dollars per day for the one hundred thirty days (138) the final compliance report was delinquent. The proposed civil liability for this violation is thirteen thousand eight hundred dollars (\$13, 800) as described in Appendix H.

Maximum

The City submitted the final compliance report 138 days late. Based on the statutory maximum of \$5,000 per day of violation contained in CWC §13350(e)(1), the maximum civil liability that could be imposed by the Regional Board for this measure of liability is six hundred ninety thousand dollars (\$690,000).

I. \$4,800 in Civil Liability is Appropriate for Violations of Discharge Specification B.1 of Order No. 93-70 (Subject to CWC §13350)

Proposed

Consideration of the factors described in CWC §13327 supports imposition of civil liability of four thousand eight hundred dollars (\$4,800) based on three hundred dollars (\$300) per day for sixteen violations as described in Appendix I.

Maximum

Pursuant to CWC §13350(e)(2), the maximum civil liability that could be imposed by the Regional Board for these violations is ten dollars (\$10) per gallon discharged. Based on reported flow rates during the sixteen days of violation (10,890,000 gallons over sixteen days of violation) is one hundred eight million nine hundred thousand dollars (\$108,900,000).

VII. TOTAL PROPOSED ADMINISTRATIVE CIVIL LIABILITY

The total proposed administrative civil liability for the violations contained in Complaint No. R9-2005-0265 as discussed in this technical analysis is one million seven hundred ninety seven thousand one hundred fifty dollars (\$1,797,150).