

State of California
Regional Water Quality Control Board
San Diego Region

SUPPLEMENTAL
ENFORCEMENT OFFICER SUMMARY REPORT
March 13, 2013

- ITEM: 6
- SUBJECT: Settlement Agreement and Stipulation for Order and Administrative Civil Liability Order, City of Oceanside, Haymar Line Sanitary Sewer Overflow. Settlement to resolve, by consent, violations of Order Nos. 2006-0003-DWQ and R9-2007-0005, as set forth in Complaint No. R9-2012-0023. The Settlement proposes liability of \$770,184, of which \$385,092 in liability would be paid to the State Water Resources Control Board's Cleanup and Abatement Account, \$385,092 in liability would be suspended upon successful completion of two Enhanced Compliance Actions as described in Tentative Order No. R9-2013-0004. (*Barry Pulver*)
- PURPOSE: The San Diego Water Board will consider accepting a settlement agreement by adopting Tentative Order No. R9-2013-0004 (Tentative Order [Supporting Document 3]) to resolve, by consent, all alleged violations set forth in Complaint No. R9-2012-0036 for Administrative Civil Liability (ACL Complaint [Supporting Document 1]) and the Technical Analysis to the ACL Complaint (Supporting Document 2) against the City of Oceanside. If the San Diego Water Board decides not to adopt the Tentative Order the matter may be rescheduled to a future public hearing at which time the San Diego Water Board will receive evidence and testimony, and consider assessment of liability based upon the ACL Complaint.
- RECOMMENDATION(S): The Advisory Team will be available to answer questions and may provide a recommendation to the San Diego Water Board for action on Tentative Order No. R9-2013-0004.
- KEY ISSUES: Adoption of the Tentative Order (Supporting Document 3) will provide closure to the ACL Complaint. The Prosecution Team avers that the resolution of the alleged violations is fair, reasonable, fulfills its enforcement objectives, and is in the best interest of the public. If the Tentative Order is not

adopted additional time will be needed to prepare and conduct a hearing and delay the resolution of this matter.

DISCUSSION:

The City of Oceanside is required to operate and maintain its sanitary sewage collection system in compliance with State Water Resources Control Board Order No. 2006-003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* and San Diego Water Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region*.

The San Diego Water Board Assistant Executive Officer issued an ACL Complaint (Supporting Document 1) to the City of Oceanside on February 22, 2012, in the amount of \$1,572,850 for alleged violations of Order Nos. 2006-0003-DWQ and R9-2007-0005. The Complaint alleged that an illicit discharge of untreated sewage occurred sometime between December 23 and 28, 2010, due to a break in the Haymar Sewer Line (see Location Map, Supporting Document No. 4), and entered Buena Vista Creek, flowed into the Buena Vista Lagoon, and ultimately to the Pacific Ocean. The details of these alleged violations are set forth in the ACL Complaint (Supporting Document 1) and accompanying Technical Analysis to the ACL Complaint (Supporting Document 2).

The initial liability amount proposed in the ACL Complaint was based on various factors including the volume of untreated sewage discharged (see Supporting Document 2). The maximum estimated volume of 5,350,000 gallons of untreated sewage discharged to Buena Vista Creek was used to determine the initial liability amount. As described in the Tentative Order, the exact time of the break could not be determined so the City of Oceanside estimates that the volume of sewage discharged into Buena Vista Creek ranged between 180,000 and 5,350,000 gallons (see Supporting Documents 2 and 3).

After lengthy negotiations and in an effort to reach a fair settlement, the San Diego Water Board Prosecution Team and the City of Oceanside agreed to use a revised volume of sewage discharged for the purpose of determining the proposed liability. Rather than using the maximum estimated volume, the midpoint of the estimated range of sewage discharged (2,585,000 gallons) was used for the calculation of liability arrived at in the Tentative Order. All

other factors remained the same as in the initial liability calculation.

If adopted, the Tentative Order will impose a civil liability of \$770,184 (including Staff costs) against the City of Oceanside and will resolve, by consent and without further administrative proceedings, all alleged violations as set forth in the ACL Complaint. Under the terms of the proposed settlement, within 30 days of adoption of the Tentative Order, the City of Oceanside will pay \$385,092 to the State Water Resources Control Board's Cleanup and Abatement Account. The remaining \$385,092 in liability will be suspended upon the satisfactory completion of two Enhanced Compliance Actions (ECAs) costing no less than \$382,092.

The details of the proposed ECAs are described in Attachment A – Cured in Place Pipe Lining (Supporting Document 5) and Attachment B – SMARTCOVER Sewer Monitoring System (Supporting Document 6) to the Tentative Order.

LEGAL CONCERNS:

None

SUPPORTING DOCUMENTS:

1. Complaint No. R9-2012-0036 for Administrative Civil Liability
2. Technical Analysis to the ACL Complaint
3. Tentative Order No. R9-2013-0004
4. Location Map
5. Attachment A – Cured in Place Pipe Lining
6. Attachment B – SMARTCOVER Sewer Monitoring System

PUBLIC NOTICE:

Notice of the Proposed Settlement, the San Diego Water Board's planned consideration of the Tentative Order, the amount of the proposed settlement, and the opportunity for public comment was posted on the San Diego Water Board's website and sent electronically to known interested parties on February 2, 2013. Interested parties and the public were provided 30 days to submit comments to the San Diego Water Board. Although earlier comments were requested none were received as of March 6, 2013.