

State of California
Regional Water Quality Control Board
San Diego Region

ENFORCEMENT OFFICER SUMMARY REPORT
May 8, 2013

ITEM: 8

SUBJECT: Administrative Civil Liability: Settlement Agreement and Stipulation for Order and Administrative Civil Liability Order, City of San Diego, Sanitary Sewer Overflow to Los Penasquitos Creek, Penasquitos Lagoon, and the Pacific Ocean. Settlement to resolve violations of Order Nos. 2006-0003-DWQ and R9-2007-0005 as set forth in Tentative Order No. R9-2013-0032. The Settlement would impose monetary liability of \$1,245,414 against the City of San Diego, of which \$622,707 in liability would be paid to the State Water Resources Control Board's Cleanup and Abatement Account and \$622,707 in liability would be suspended upon successful completion of an Enhanced Compliance Action as described in Tentative Order No. R9-2013-0032. (*Barry Pulver*)

PURPOSE: The San Diego Water Board will consider accepting a settlement agreement by adopting Tentative Order No. R9-2013-0032 (Tentative Order [Supporting Document 1]) to resolve, without formal administrative proceedings, all alleged violations set forth in Investigative Order No. R9-2011-0070 (Investigative Order [Supporting Document 2]) the City of San Diego. If the San Diego Water Board decides not to adopt the Tentative Order, the Prosecution Team may re-open settlement discussions with the City of San Diego or issue an administrative civil liability complaint and proceed with a contested evidentiary hearing before the San Diego Water Board to determine whether to assess administrative civil liabilities against the City of San Diego for the alleged violations.

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. R9-2013-0032.

KEY ISSUES: Adoption of the Tentative Order (Supporting Document 1) will resolve the alleged violations described in the Investigative Order (Supporting Document 2). The

Prosecution Team avers that the resolution of the alleged violations is fair, reasonable, fulfills its enforcement objectives, that no further action is warranted concerning the alleged violations, and is in the best interest of the public.

DISCUSSION:

The City of San Diego 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*.

According to the proposed settlement, the City of San Diego reported that the loss of electricity at Pump Station No. 64 (see Site Location Map, Supporting Document No. 3) due to the regional power outage of September 8, 2011 resulted in a discharge of approximately 2,431,550 gallons of untreated sewage into Los Penasquitos Creek and the Los Penasquitos Estuary (Supporting Document No. 4). According to the City of San Diego approximately 931,550 gallons, or 38%, of the reported volume of discharged sewage was recovered.

In response to the spill, the Prosecution Team issued an Investigative Order (Supporting Document No. 2) to the City of San Diego. The Investigative Order required the City of San Diego to provide information regarding the causative factors for the spill, the extent of the spill, and monitoring data to evaluate the impact the spill had on water quality in the affected area. The City of San Diego submitted the required reports on October 14, 2011, January 13, 2012, and February 17, 2012 (see Supporting Documents Nos. 4 and 5).

The spill at Pump Station No. 64 began at 5:50 p.m. on September 8, 2011 and continued for approximately five hours. According to the proposed settlement, the City of San Diego estimated that approximately 2,431,550 gallons of untreated sewage was discharged into Los Penasquitos Creek and flowed to the Los Penasquitos Estuary. Observations made by the City of San Diego and the County of San Diego Department of Environmental Health as reported in their responses indicate that the sewage likely reached the Pacific Ocean at Torrey Pines State Beach.

Los Penasquitos Creek, Los Penasquitos Lagoon, and the Pacific Ocean supports numerous beneficial uses including, but not limited to, contact and non-contact recreation, warm and cold fresh water habitat, wildlife habitat, and marine habitat. Known impacts to these beneficial uses included: 1) Closure of Torrey Pines State Beach in the vicinity of the mouth of Los Penasquitos Lagoon, 2) Restriction of fishing downstream of the spill, and 3) Numerous fish kills reported downstream of the spill and within the Torrey Pines Nature Reserve.

As required by the Investigative Order the City of San Diego conducted monitoring activities downstream of the spill to evaluate the impact on the beneficial uses of the receiving waters. The City of San Diego concluded (see Supporting Document No. 5) that short term impacts included fish kills and exceedances of the Water Quality Objective (WQO) for dissolved oxygen (<5%). The City of San Diego reported that dissolved oxygen content returned to normal conditions by October 12, 2011. Supporting Document No. 5 provides additional information regarding the monitoring activities conducted by the City of San Diego.

If adopted, the Tentative Order will impose a civil liability of \$1,245,414 (including Staff costs) against the City of San Diego and will resolve, without further administrative proceedings, all alleged violations as set forth in the Tentative Order. Under the terms of the proposed settlement, within 30 days of adoption of the Tentative Order, the City of San Diego will pay \$622,707 to the State Water Resources Control Board's Cleanup and Abatement Account. The remaining \$622,707 in liability will be suspended upon the satisfactory completion of an Enhanced Compliance Actions (ECAs) costing no less than \$622,707.

The proposed ECA consists of the purchase and installation of backup generators at Pump Station No. 64 and five additional locations. The estimated cost to complete the ECA is \$12,783,000. Details of the ECA is presented in the Tentative Order (Supporting Document No. 1)

LEGAL CONCERNS: None

SUPPORTING DOCUMENTS:

1. Tentative Order No. R9-2013-0032
2. Investigative Order No. R9-2011-0070
3. Site Location Map

4. Response to Investigative Order No. R9-2011-0070, pertaining to the Discharge of Untreated Sewage to Los Penasquitos Creek on September 8, 2011 caused by Loss of Power at Pump Station 64, Submitted by the City of San Diego, dated October 14, 2011
5. Preliminary Final Report for Investigative Order No. R9-2011-0070, dated January 2012, and Supplemental Final Report for Investigative Order No. R9-2011-0070, dated February 2012
6. Public Comments by:
 - a. Ms. Carol A. Martin
 - b. Mr. Peter Jensen, President Board of Counselors, Torrey Pines Association
 - c. Mr. Clay Phillips, San Diego Coast District Superintendent, California Department of Parks and Recreation
 - d. Ms. Jill M. Witkowski, Waterkeeper, San Diego Coastkeeper,
 - e. Mr. Mike Hastings, Executive Director, Los Penasquitos Foundation
7. Responses to Public Comments by the San Diego Water Board
8. Responses to Public Comments by the City of San Diego

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 March 11, 2013. Interested parties and the public were provided 30 days to submit comments to the San Diego Water Board. Five comment letters were received (Supporting Documents No. 6). Responses to comments were prepared by the Prosecution Team and the City of San Diego (Supporting Documents No. 7 and 8).