

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

**ADVISORY TEAM SUMMARY REPORT
SEPTEMBER 13, 2023**

ITEM 7

SUBJECT

Administrative Civil Liability Hearing: Administrative Civil Liability Order in the Matter of Quality Investors 1 2016 LLC and David G. Epstein for Alleged Violations of Water Quality Requirements as set forth in Administrative Civil Liability (ACL) Complaint No. R9-2023-0013. (*David Gibson, Vincent Vu*)

KEY ISSUE

The San Diego Water Board will hear evidence and testimony related to Administrative Civil Liability Complaint No. R9-2023-0013, which alleges violations of State Water Resources Control Board Order No. 2009-0009-DWQ, NPDES No. CAS000002 (as amended), National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit), and consider whether to impose administrative civil liability upon Quality Investors 1 2016 LLC and David G. Epstein (collectively, the Dischargers).

PRACTICAL VISION

Consistent with the mission of the Strategize for Healthy Waters chapter of the Practical Vision, the San Diego Water Board will consider an enforcement action related to discharges of sediment-laden stormwater into the City of Oceanside's municipal separate storm sewer system (MS4) and, subsequently, into Buena Vista Creek and Buena Vista Lagoon in violation of the Construction General Permit.

Beneficial uses designated in the Water Quality Control Plan for the San Diego Basin (Basin Plan) for Buena Vista Creek include: agricultural supply (AGR), industrial service supply (IND), rare, threatened, or endangered species (RARE), contact water recreation (REC-1) and non-contact water recreation (REC-2), warm freshwater habitat (WARM), and wildlife habitat (WILD). Beneficial uses designated in the Basin Plan for Buena Vista Lagoon include: preservation of biological habitats of special significance (BIOL), estuarine habitat (EST), marine habitat (MAR), rare, threatened, or endangered species (RARE), contact water recreation (REC-1) and non-contact water recreation (REC-2), warm freshwater habitat (WARM) and wildlife habitat (WILD).

The San Diego Water Board has identified Buena Vista Creek and Buena Vista Lagoon as key areas for the habitat and ecosystem key beneficial uses and are priorities for protection within the region. (Resolution No. [R9-2017-0030](#).) Buena Vista Creek is listed as impaired in the [2020-2022 California Integrated Report](#) (Clean Water Act Section 303(d) List and 305(b) Report) due to benthic community effects, pyrethroids, bifenthrin, cyfluthrin, cypermethrin, indicator bacteria, nitrogen, phosphorus, selenium, total

dissolved solids, and toxicity. Buena Vista Lagoon is listed as impaired for indicator bacteria, nutrients, sedimentation and siltation, and toxicity.

DISCUSSION

The San Diego Water Board Prosecution Team issued Administrative Civil Liability Complaint No. R9-2023-0013 (Supporting Document No. 1 (Complaint)) on November 10, 2022, for alleged violations of the Construction General Permit at the Vista Pacific Construction Site (Site) located in the City of Oceanside, County of San Diego. The Complaint alleges that three violations occurred.

Violation 1: The Prosecution Team alleges that the Dischargers violated Attachment D, Provision F, of the Construction General Permit on at least two days. On December 14 and 24, 2021, the Dischargers failed to control run-on to minimize or prevent pollutants in storm water discharges through the implementation of Best Management Practices (BMPs) that achieve the Best Conventional Control Technology (BCT) for conventional pollutants.

Violation 2: The Prosecution Team alleges that the Dischargers violated Provisions III.B and V.A.2 of the Construction General Permit on at least two days. During storm events on December 14 and 24, 2021, the Dischargers failed to comply with the Construction General Permit’s narrative effluent limitation by failing to prohibit the discharge of approximately 425,670 gallons of sediment-laden storm water to waters of the U.S.

Violation 3: The Prosecution Team alleges that the Dischargers violated Provision III.A of the Construction General Permit on at least two days. On December 28 and 30, 2021, the Dischargers pumped sediment-laden storm water with turbidity levels in excess of 250 NTU from the dirt pit at the Site and into the City’s MS4 and waters of the U.S. in violation of Basin Plan Prohibitions 1 and 14.

The Complaint proposes assessment of administrative civil liability in the amount of \$411,475 for these alleged violations of the Construction General Permit, as detailed in Attachment A to Administrative Civil Liability Complaint No. R9-2023-0013: Liability Methodology (Supporting Document No. 2).

Violation 1	\$ 15,400
Violation 2	\$340,781
Violation 3	\$ 7,840
Staff Costs	\$ 47,454
Total	\$411,475

Interested persons were required to submit non-evidentiary policy statements by December 18, 2022. The San Diego Water Board did not receive any non-evidentiary policy statements from interested persons.

The parties submitted evidence and briefing on this matter in accordance with the Hearing Procedure, as revised. The Prosecution Team objected to the Dischargers' photographic and video exhibits on the basis that the exhibits are unreliable due to a lack of foundation. The San Diego Water Board issued an order which provisionally admitted the Dischargers' photographic and video exhibits pending the Dischargers establishing sufficient foundation for the exhibits at the hearing. The San Diego Water Board may issue a final ruling on the Prosecution Team's evidentiary objections.

The Prosecution Team submitted their Proposed Findings of Fact and Conclusions of Law (Supporting Document No. 9) on June 23, 2023. The Dischargers did not submit Proposed Findings of Fact and Conclusions of Law.

The San Diego Water Board will conduct a hearing to receive evidence and testimony regarding the alleged violations. The hearing will be conducted in accordance with the Third Revised Hearing Procedure, issued by the San Diego Water Board on July 31, 2022 (Supporting Document No. 8) and applicable laws and regulations. Board members or Board counsel may ask questions of the parties or any witness. (Cal. Code Regs., tit. 23, section 648.5(b).) Upon the conclusion of the hearing, the San Diego Water Board may meet in closed session to consider the evidence and to deliberate on a decision to be reached based upon that evidence. (Gov. Code, section 11126(c)(3).)

Adoption of the Prosecution Team's Proposed Order (Supporting Document No. 9) would impose administrative civil liability in the amount of \$411,475 upon the Dischargers for violations of the Construction General Permit. The Board may also elect to continue the hearing to a later date, to take the matter under submission, or refer the matter to the Attorney General's Office for judicial enforcement.

PUBLIC NOTICE

The Prosecution Team's Proposed Order was released for public review on the San Diego Water Board's meeting agenda webpage on August 30, 2023.

The agenda notice for today's meeting was posted on the San Diego Water Board's website and sent to subscribers to the email list for Board meetings. This satisfies the Bagley-Keene Open Meeting Act requirements to publish the meeting notice and agenda.

SUPPORTING DOCUMENTS

1. Administrative Civil Liability Complaint No. R9-2023-0013 Attachment A, Liability Methodology to Complaint No. R9-2023-0013
2. Attachment A, Liability Methodology to Complaint No. R9-2023-0013
3. Prosecution Team's Prehearing Evidence and Argument (exhibits available electronically)
4. Dischargers' Prehearing Evidence and Argument (exhibits available electronically)

5. Prosecution Team Rebuttal Evidence and Evidentiary Objections (exhibits available electronically)
6. Dischargers' Rebuttal Evidence (no additional exhibits were submitted)
7. San Diego Water Board's Ruling on Evidentiary Objections
8. Third Revised Hearing Procedure for Administrative Civil Liability Complaint No. R9-2023-0013
9. Prosecution Team's Proposed Findings of Fact and Conclusions of Law (Prosecution Team's Proposed Order)
10. Attachment A to Prosecution Team's Proposed Order: Liability Methodology