

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

ORDER NO. R9-2010-0020

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
PURSUANT TO SETTLEMENT AGREEMENT
AGAINST**

**SAN DIEGO UNIFIED SCHOOL DISTRICT
BELL JUNIOR HIGH SCHOOL LANDFILL**

**FOR VIOLATIONS OF
ORDER NO. 97-11,
GENERAL WASTE DISCHARGE REQUIREMENTS FOR POST-CLOSURE
MAINTENANCE OF INACTIVE NONHAZARDOUS WASTE LANDFILLS WITHIN THE
SAN DIEGO REGION**

The California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board), having considered in a public meeting on May 12, 2010, all comments received on the issuance of liability against the San Diego Unified School District regarding violations alleged in Complaint No. R9-2009-0175, dated November 19, 2009 (Complaint), having provided public notice thereof and not less than thirty (30) days for public comment, and on the recommendation for administrative assessment of civil liability in the amount of \$155,000 finds as follows:


1. The San Diego Water Board incorporates the Settlement Agreement and Stipulation for Order No. R9-2010-0020 by this reference as if set forth fully herein.
2. The San Diego Water Board finds that the Recitals set forth in the Settlement Agreement and Stipulation for Order No. R9-2010-0020 are true.
3. San Diego Unified School District (District) owns property located at 7300 Paradise Valley Road, San Diego, California. Between 1961 and 1966 the District leased the property to the County of San Diego who operated the Bell Junior High School Landfill, previously known as the Paradise Valley Landfill and Sweetwater II Landfill.
4. The Bell Junior High School Landfill is subject to the requirements of Order No. 97-11, *General Waste Discharge Requirements for Post-Closure Maintenance of Inactive Nonhazardous Waste Landfills Within the San Diego Region*.

5. On November 19, 2009, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R9-2009-0175 to the District proposing to impose \$227,000 in civil liability for five alleged violations of the semiannual monitoring and reporting requirements contained in Directive E.8 of Order No. 97-11.
6. The District is alleged to have violated provisions of law for which the San Diego Water Board may impose discretionary administrative civil liability pursuant to section 13350 of the California Water Code.
7. The District is alleged to have violated provisions of law for which the San Diego Water Board must impose a minimum monetary penalty pursuant to California Water Code section 13350(e)(1)(B), of one hundred dollars (\$100) for each day in which the violation occurs.
8. The San Diego Water Board has been presented with a proposed settlement of the claims alleged in the Complaint. The proposed settlement agreement represents a mutually agreed-upon resolution of the Prosecution Team's claims by the payment of an administrative civil liability in the amount of \$155,000 to the Waste Discharge Permit Fund within thirty (30) days of issuance of this Order.
9. The San Diego Water Board incurred costs totaling \$10,043, which includes investigation, preparation of enforcement documents and communication with the District regarding the enforcement action.
10. In accepting this settlement, the San Diego Water Board has considered, where applicable, each of the factors prescribed in California Water Code section 13327. The San Diego Water Board's consideration of these factors is based upon information obtained by the San Diego Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the San Diego Water Board. In addition to these factors, this settlement recovers the costs incurred by the staff of the San Diego Water Board for this matter.
11. This is an action to enforce the laws and regulations administered by the San Diego Water Board. The San Diego Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

IT IS HEREBY ORDERED, that pursuant to California Water Code section 13350 and California Government Code section 11415.60 that:

1. The Settlement Agreement and Stipulation for Order No. R9-2010-0020 is approved.
2. San Diego Unified School District shall submit a check to the San Diego Water Board in the amount of \$155,000 payable to the "State Water Resources Control Board, Waste Discharge Permit Fund" within 30 days of adoption of this Order.
3. The San Diego Water Board's Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the San Diego Unified School District fails to perform any of its obligations under the Order.
4. Fulfillment of the San Diego Unified School District's obligations under the Order constitutes full and final satisfaction of any and all liability for each claim in the Complaint in accordance with the terms of the Order.

I, David W. Gibson, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on May 12, 2010.


for James G. Smith, AEO
DAVID W. GIBSON
Executive Officer

CIWQS
Place ID: 209139
Party ID: 39632
Reg Msr: 371999

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

In the matter of:

| | | |
|--|---|---|
| San Diego Unified School District |) | |
| Bell Junior High School Landfill |) | Settlement Agreement and Stipulation |
| Administrative Civil Liability |) | for |
| Order No. R9-2010-0020 |) | Order No. R9-2010-0020 |
| |) | |

Section I: Introduction

This Settlement Agreement and Stipulation for Order (“Stipulation”) and the attached Administrative Civil Liability Order (the “Order”) are issued in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint No. R9-2009-0175, dated November 19, 2009 (the “Complaint”). The parties to this proceeding are the San Diego Regional Water Quality Control Board (“San Diego Water Board”) Prosecution Team, and the San Diego Unified School District (“District” or “Discharger”)(collectively the “Parties”).

Section II: Recitals

1. The Discharger is the owner of the Bell Junior High School Landfill (a.k.a. the Paradise Valley Landfill and the Sweetwater II Landfill) located on property at 7300 Paradise Valley Road, San Diego California (the “Property”). The Complaint alleges that the District has violated and continues to violate Directive E.8 of Order No. 97-11 *General Waste Discharge Requirements for Post-Closure Maintenance of Inactive Nonhazardous Waste Landfills Within the San Diego Region* by failing to submit five semiannual monitoring reports that were due from October 2007 through April 2009. (See Monitoring Provision C of Monitoring and Reporting Program No. 97-11.) These violations subject the Discharger to administrative civil liability under California Water Code section 13350.
2. The Complaint describes the basis for a recommended administrative civil liability totaling \$227,000 for alleged violations of Order No. 97-11. That amount includes staff costs of approximately \$10,043.
3. To resolve by consent and without further administrative proceedings the allegations of the Complaint the Discharger shall pay \$155,000 to the State Water Resources Control Board Waste Discharge Permit Fund, which includes \$10,043 for staff costs. Payment of \$155,000 is due no later than 30 days following the San Diego Water Board’s adoption of the attached Order.

4. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle the Complaint, the Discharger hereby agrees to comply with the terms and conditions of the attached Order.

Section III: Stipulations

5. The Parties incorporate Paragraphs 1 through 4 by this reference as if set forth fully herein, stipulate to the entry of the attached Order and jointly recommend that the San Diego Water Board issue the Order to effectuate the settlement.
6. The Discharger hereby agrees to pay the administrative civil liability totaling \$155,000 as set forth in paragraph 3, above.
7. The Discharger understands that payment in accordance with this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability.
8. Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
9. In consideration of the Discharger's compliance with this Order, the Prosecution Team hereby agrees not to initiate any other administrative or judicial enforcement actions against the Discharger for the violations alleged in the Complaint.
10. The Discharger understands that this Order was noticed for public comment on March 10, 2010 prior to consideration by the San Diego Water Board. In the event objections are raised during the public comment period for the Order, the San Diego Water Board or the Executive Officer may, under certain circumstances, require a public hearing regarding the Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the Order as necessary or advisable under the circumstances.
11. The Parties agree that the procedure contemplated for adopting the Order by the San Diego Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
12. This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is represented by counsel in this matter.


13. This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the San Diego Water Board.
14. This Stipulation may be executed in counterparts and by facsimile signature.
15. In the event that this Order does not take effect because it is not approved by the San Diego Water Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the San Diego Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:
 - a. Objections related to prejudice or bias of any of the San Diego Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the San Diego Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
16. The Discharger has been informed of the rights provided by California Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the San Diego Water Board prior to the adoption of the Order.
17. The Discharger hereby waives its right to petition the San Diego Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
18. The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any covered matter.
19. The Assistant Executive Officer warrants by signing below that he has the authority to execute the Stipulation on behalf of the Prosecution Team. The General Counsel

warrants by signing below that he/she has the legal authority to bind the Discharger to the terms of this Stipulation. The Parties hereto have caused this Stipulation to be executed by their respective officers on the dates set forth, and the Stipulation is effective as of the most recent date signed.

20. This Stipulation is effective and binding on the Parties upon its execution.

IT IS SO STIPULATED.

San Diego Regional Water Quality Control Board Prosecution Team

By: 
James G. Smith, Assistant Executive Officer

Date: 26 Mar 10

San Diego Unified School District

By: _____
Mark Breese, District Counsel

Date: _____

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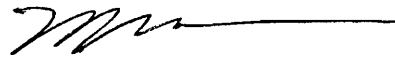
IT IS SO STIPULATED.

San Diego Regional Water Quality Control Board Prosecution Team

By: _____
James G. Smith, Assistant Executive Officer

Date: _____

San Diego Unified School District

By: 

Mark Breese, General Counsel

Date: March 25, 2010