
San Diego Regional Water Quality Control Board

September 17, 2018

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Certified Mail- Return Receipt Requested
Article Number: 7015 0640 0006 1569 9623

In reply refer to / attn:
728606:KYaeger

Subject: Notice of Violation No. R9-2018-0146 Related to Violations of Section 301 of the Federal Clean Water Act (33 U.S.C. § 1311) and Sections 13260 and 13376 of the California Water Code

CVS Pharmacy, 5455 La Jolla Blvd., San Diego, CA 92037; WDID 900001799

Mr. Crawford:

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) is issuing Notice of Violation (NOV) No. R9-2018-0146 set forth below to CVS Pharmacy (CVS Pharmacy or Discharger) for discharging extracted groundwater to the Pacific Ocean without coverage under a valid National Pollutant Discharge Elimination System (NPDES) permit and failure to comply with section 301 of the Federal Clean Water Act (33 U.S.C. § 1311); and section 13376 of the California Water Code.

Background

The CVS Pharmacy site located at 5455 La Jolla Blvd., San Diego, CA (Facility) requires permanent dewatering due to the shallow groundwater at the site that infiltrates subterranean structures. The groundwater seepage drains into a sump and is treated before being discharged to a storm drain that leads to the Pacific Ocean.

On March 12, 2008, the San Diego Water Board adopted Order No. R9-2008-0002, *General Waste Discharge Requirements for Discharges from Groundwater Extraction and Similar Discharges to Surface Waters Within the San Diego Region Except for San Diego Bay* (2008 Order). The 2008 Order became effective on March 12, 2008. The 2008 Order required that groundwater extraction discharges comply with effluent limitations and monitoring requirements that protect the beneficial uses of the receiving water. The Discharger submitted a Notice of Intent (NOI) for coverage under the 2008 Order on June 9, 2008. The San Diego Water Board issued Notice of Enrollment (NOE) on September 30, 2008.

On June 24, 2015, the San Diego Water Board adopted Order No. R9-2015-0013, *General Waste Discharge Requirements for Groundwater Extraction Discharges to Surface Waters Within the San Diego Region* (Current Order). The Current Order superseded R9-2008-0002, except for enforcement purposes and for coverage of existing discharges until they timely

enrolled in the Current Order no later than June 24, 2016.¹ The Current Order became effective on October 1, 2015. On July 2, 2015, the San Diego Water Board advised all dischargers enrolled under the 2008 Order, including CVS Pharmacy, that they must submit an NOI for coverage under the Current Order no later than March 24, 2016.

The San Diego Water Board issued a Notice of Termination (NOT) that terminated the Discharger's coverage under the 2008 Order on June 24, 2016. Prior to and after the NOT was issued, the San Diego Water Board and the Discharger were in communication regarding the enrollment of the Facility in the Current Order.

As of the date of this letter, the Discharger has not enrolled in the Current Order. The Discharger has been discharging without coverage under a valid NPDES permit since June 24, 2016.

Alleged Violations

1. **Section 301 of the Federal Clean Water Act (33 U.S.C. § 1311)** prohibits the discharge of pollutants to surface waters except in compliance with an NPDES permit.
2. **Water Code section 13376** states that "A person that discharges pollutants or proposes to discharge pollutants to navigable waters of the United States within the jurisdiction of the State...shall file a report of the discharge in compliance with the procedures set forth in Section 13260."
3. **Water Code section 13260** requires a discharger to file a report of the discharge and submit an annual fee when discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the State.

The Facility discharges treated extracted groundwater to a storm drain that leads to the Pacific Ocean, a water of the United States and/or State. The Discharger's enrollment under the previous 2008 Order was terminated on June 24, 2016, and the Discharger failed to enroll under the Current Order. The San Diego Water Board notified the Discharger several times of the need to enroll under the Current Order. Notifications were sent before the issuance of the NOT by email dated June 6, 2016, and after the issuance of the NOT by emails dated July 12, 2016, November 22, 2016, and July 6, 2018. The Discharger continued to discharge to the Pacific Ocean without coverage under an NPDES permit.

Summary of Potential Enforcement Actions

The violations may potentially subject the Discharger to additional enforcement by the San Diego Water Board or the State Water Resources Control Board, including an administrative civil liability assessment of up to \$10,000 per day of violation and \$10 per gallon for each gallon discharged but not cleaned up (Water Code section 13385) as well as any of the following enforcement actions:

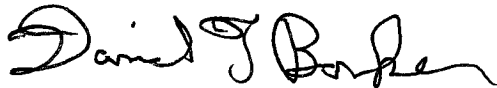
Other Potential Enforcement Action Options	Applicable Water Code Section(s)
Technical or Investigative Order	Sections 13267 and 13383
Cleanup and Abatement Order	Section 13304
Cease and Desist Order	Sections 13301-13303
Time Schedule Order	Sections 13000 and 13308

¹ Section II.D of the Current Order (Order No. R9-2015-0013) provided that all NOEs issued under R9-2008-0002 would be terminated. Dischargers were required to submit a complete NOI package to enroll under the Current Order no later than March 24, 2016 or else risk losing permit coverage.

In addition, the San Diego Water Board may consider referring the matter to other resource agencies, referring the matter to the State Attorney General for injunctive relief, and referral to the municipal or District Attorney for criminal prosecution. The San Diego Water Board reserves its right to take any enforcement action authorized by law for violations in this matter. In making the determination of whether and how to proceed with further enforcement action, the San Diego Water Board will consider the severity and effect of the violation, the level of cooperation, the time it takes to correct the identified violations, and the sufficiency of the corrections.

In the subject line of any response, please include the following: 728606:KYaeger. If you have any questions regarding this notice, please contact Keith Yaeger by phone at (619) 521-5899, or by email at Keith.Yaeger@waterboards.ca.gov.

Respectfully,



David T. Barker, P.E.
Supervising Water Resource Control Engineer
San Diego Water Board

cc by email:

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Tech Staff Info & Use	
General Order No.	R9-2015-0013
NPDES No.	CAG919003
CW Place ID (CVS Permanent Dewatering-5455 La Jolla Blvd:9-1799)	728606
CW Party/Organization ID (CVS Pharmacy formerly (Longs Drugs Stores)	316711
CW Person ID (Chandler Crawford)	582134
CW Regulatory Measure (General Order)	400619
NOV Order No.	R9-2018-0146
CW Regulatory Measure (NOV)	423178
WDID	9 000001799