

State of California
California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:

Metropolitan Water District of)	
Southern California)	Complaint No. R8-2008-0089
700 North Alameda Street)	
Los Angeles, CA 90012-2944)	for
)	Administrative Civil Liability
Attn: John Clairday)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The Metropolitan Water District of Southern California (MWDSC) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose administrative civil liability, pursuant to California Water Code Section 13385.
2. A hearing concerning this Complaint will be held before the Board within 90 days of the date of issuance of this Complaint, unless MWDSC waives its right to a hearing. Waiver procedures are specified in this Complaint. If the hearing on this matter is not waived, the hearing will be held during the Board's regular meeting on November 21, 2008 at the City Council Chambers, City of Loma Linda, CA. MWDSC, or its representative, will have the opportunity to appear and be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Board.
3. If a hearing is held on this matter, the Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. MWDSC is alleged to have violated California Water Code Section 13376 by allowing or causing waste to be discharged to waters of the United States without first filing a report of waste discharge in accordance with California Water Code Section 13260.

This Complaint is based on the following:

- A. MWDSC owns and operates the Robert B. Diemer Treatment Plant (Diemer), located at 3972 Valley View Avenue, Yorba Linda, in Orange County. The plant is capable of treating up to 520 million gallons of drinking water per day. The water treated at the plant is mostly imported from the Colorado River or from Northern California. The treatment

processes include coagulation, sedimentation and disinfection. During the treatment processes, chemicals are introduced to enhance the settling of solids and a waste sludge stream containing sludge (0.5 to 1.0% solids) is produced. The sludge produced during sedimentation is conveyed to another unit process that thickens it prior to its proper disposal as a solid waste.

- B. MWDSC has a permit to discharge waste from Diemer that poses a *de minimus* threat to waters of the United States under Order No. R8-2003-0061, NPDES No. CA998001, as amended by Order No. R8-2005-0041 and R8-2006-0004 (De Minimus Permit). The De Minimus Permit authorizes the discharge of decanted filter backwash wastewater and/or sludge dewatering filtrate water from water treatment facilities and prohibits the discharge of waste sludge.
- C. A portion of Diemer drains into the ephemeral Telegraph Creek which traverses through Chino Hills State Park. Telegraph Creek flows into Carbon Canyon Creek before it enters Reach 2 of the Santa Ana River. The beneficial uses of Carbon Canyon Creek identified in the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) include: municipal and domestic water supply, groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat, wildlife habitat, and habitats for rare, threatened or endangered species. These two creeks are waters of the United States.
- D. On April 28, 2008, the waste sludge stream normally conveyed to the sludge thickening process unit overflowed from one of the manholes at the Diemer facility and discharged to Telegraph Creek. The overflow occurred due to the incorrect setting of an isolation valve to the sludge thickening unit that was closed when it was supposed to be open. Information provided by MWDSC indicates that its contractor/subcontractor had improperly installed three of the four motor-operated plug valves in the waste sludge line. The contractor/subcontractor did not use proper protocols during replacement of the improperly installed valves and did not provide a notice of disconnect or an outage request. Board staff concluded that the overflow was caused by: (1) contractor/operator errors; (2) lack of written procedures and training; (3) communication problems; and (4) lack of process control measures and alarms. This discharge lasted for approximately an hour and discharged 2,700 gallons of a waste sludge stream containing 5,000 to 10,000 mg/l suspended solids.
- E. On May 8, 2008, another discharge of the waste sludge stream normally conveyed to the thickening unit occurred under similar circumstances as the April 28th discharge. As the operations of two sludge thickener units were being switched, the isolation valves to both the operating unit being put into service and the unit being taken out of service were closed. This

caused an overflow of 57,000 gallons of the waste sludge stream to Telegraph Creek and Carbon Canyon Creek that lasted for more than 6 hours. Both on-site operations staff and the facility's central control room operations staff had the ability to monitor the waste sludge flow diversions, but failed to do so.

- F. The waste sludge stream discharged to Telegraph and Carbon Canyon Creek had elevated levels of suspended solids (up to 10,000 mg/l in the waste sludge stream), metals (e.g., arsenic at 4.74 mg/kg, chromium at 0.173 mg/kg, copper at 22.9 mg/kg in the soil sample at the discharge point) and total residual chlorine (0.8 mg/l in the waste sludge stream).
 - G. Waste sludge was discharged to Telegraph Creek, within Chino Hills State Park, and to Carbon Canyon Creek. The discharge was to a portion of Telegraph Creek that provides habitat for two bird species protected by the Endangered Species Act: 1) the least Bell's vireo, a federally endangered listed subspecies of Bell's vireo; and 2) the coastal California gnatcatcher, which is federally listed as a threatened species in Southern California. Both discharge incidents occurred during the nesting season of these bird species. As directed by State Park staff, MWDSC did not remediate the impacted streambed of Telegraph or Carbon Canyon Creeks in an effort to preserve the riparian habitat and to minimize disruptions to the nesting season. As such, none of the discharged material was recovered or cleaned up.
- 5. MWDSC does not have authorization to discharge waste sludge from its water treatment plant to waters of the United States. Unauthorized discharges of wastes from Diemer are violations of California Water Code Section 13376.
 - 6. Pursuant to Section 13385(c), the Board can administratively assess civil liability in an amount not to exceed the sum of the following:
 - A.) Ten thousand dollars (\$10,000) for each day in which the violation occurs; and,
 - B.) Where there is a discharge, any portion of which is not susceptible to clean up or is not cleaned up, and the volume discharged, but not cleaned up, exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) times the number of gallons by which the volume discharged, but not cleaned up, exceeds 1,000 gallons.
 - 7. In accordance with Water Code Section (CWC) §13385(c), the maximum liability for the violations cited is \$597,000. The maximum liability assessment has been calculated as follows:

- A) \$20,000, based on two days of discharge (April 28 and May 8, 2008) at \$10,000 per day, plus
 - B) \$577,000 based on \$10 per gallon for each gallon over the first 1,000 gallons discharged (April 28, 2008 discharge: 2,700 gallons – 1,000 gallons = 1,700 gallons; 1,700 gallons x \$10 per gallon = \$17,000. May 8, 2008 discharge: 57,000 gallons – 1,000 gallons = 56,000 gallons; 56,000 gallons x \$10 per gallon = \$560,000).
8. Regional Board staff costs for investigating this incident are approximately \$6,652. CWC § 13385(e) specifies, among other things, that, at a minimum, liability shall be assessed at a level that recovers the economic benefit derived from the act(s) that constitute the violation. These factors were considered in assessing the penalty proposed in Paragraph 10, below.
9. CWC §13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors are addressed in the following table.

Factor	Comment
<p>A. Nature, Circumstance, Extent, and Gravity of Violation</p>	<p>MWDSC discharged 59,700 gallons of a waste sludge stream from the Robert B. Diemer Treatment Plant to Telegraph Creek and Carbon Canyon Creek that threatened the beneficial uses of these creeks including wildlife habitat and habitats for rare, threatened or endangered species. These discharges occurred twice within 11 days of each other because of contractor/operator error, communication problems and procedural failures of facility staff. These discharges could have been prevented had the facility implemented proper operational procedures.</p> <p>These discharges were to a portion of Telegraph Creek that provides habitat for two protected bird species. The discharge contained elevated levels of arsenic, total chlorine residual, chromium, copper, and suspended solids.</p>
<p>B. Culpability</p>	<p>The discharges could have been prevented through proper written procedures including procedures for communication, training, and by additional process monitoring. MWDSC is fully aware of the habitat for the protected species in the area, and, therefore, culpable for the discharges.</p>

C. Economic Benefit or Savings	MWDSC has identified and implemented multiple post-incident preventative measures, including developing written procedures to improve operational control and communication, adding computerized alarms, and implementing training programs. It is estimated that MWDSC would spend \$14,000 for the installation of process control alarm systems. Board staff does not believe there will be a significant economic savings to MWDSC because this alarm system is an additional preventative measure that was not originally envisioned for the sludge conveyance and thickening unit process.
D. Prior History of violations	In 1989, MWDSC was assessed a penalty of \$10,000 for the discharge of 15,466 gallons of wastewater from the Diemer facility to Telegraph Creek, including 466 gallons of sodium hydroxide (50% solution). In 1993, 15,000 gallons of sludge from the settling basins were released to Telegraph Creek. In 2001, Diemer violated its permit by discharging chlorine residual above its effluent limit to Telegraph Creek in three separate incidents. In 2005 and in 2006, Diemer was in violation for late submittal of reports at least six times.
E. Other Factors	Board staff spent 63 hours on investigation of the two spills that occurred on April 28 and May 8, 2008.
F. Ability to pay	Board staff has no information to indicate that MWDSC would be unable to pay the proposed assessment.

10. After consideration of the above factors, the Assistant Executive Officer proposes that civil liability be imposed on Metropolitan Water District of Southern California in the amount of \$77,700 for the violations cited above. This amount is based on the following:
 - a. \$20,000 for two days of violation
 - b. \$57,700 for 57,700 gallons @ \$1 per gallon

Metropolitan Water District)
of Southern California)
700 North Alameda Street)
Los Angeles, CA 90012-2944)
Attn: John Clairday)

Complaint No. R8-2008-0089
for
Administrative Civil Liability

WAIVER OF HEARING

I agree to waive the right of Metropolitan Water District of Southern California to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2008-0089. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of \$77,700. I understand that I am giving up the right of Metropolitan Water District of Southern California to be heard and to argue against allegations made by the Assistant Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

Date

for Metropolitan Water District of
Southern California

WAIVER OF HEARING

MWDSC may waive its right to a hearing. If you choose to do so, please sign the attached waiver form and return it, together with a check for \$77,700 payable to the State Water Resources Control Board, in the enclosed preprinted envelope. If you waive your right to a hearing and pay the assessed amount, the Regional Board may not hold a hearing regarding this complaint.

If you have any questions, please contact Stephen D. Mayville at (951) 782-4992.

10/24/08

Date

Kurt V. Berchtold

Kurt V. Berchtold

Assistant Executive Officer