

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

February 2, 2024

STAFF REPORT

ITEM: 9

**SUBJECT: Hearing on Administrative Civil Liability Complaint R8-2023-0056,
City of Norco, Riverside County**

DISCUSSION:

The California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board) is holding a hearing on Administrative Civil Liability Complaint R8-2023-0056 to receive evidence, hear argument and public comments, and consider whether to impose the proposed \$401,888.88 administrative civil liability against the City of Norco.

SEPARATION OF PROSECUTORIAL AND ADVISORY FUNCTIONS:

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by advocating before the Santa Ana Water Board (the Prosecution Team) have been separated from those who will provide legal and technical advice to the Board (the Advisory Team). Members of the Advisory Team are Jayne Joy, Executive Officer; and Lori T. Okun, Retired Annuitant, Office of Chief Counsel. Members of the Prosecution Team are Nick Amini, Supervising Water Resources Control Engineer; Adam Fischer, Senior Environmental Scientist; Charles Griffin, Senior Water Resources Control Engineer; Hero Alexander, Water Resources Control Engineer; and Naomi Rubin, Attorney IV, Office of Enforcement.

BACKGROUND:

On September 6, 2023, the Santa Ana Water Board's Branch Manager for Surface Water and Agriculture issued Administrative Civil Liability Complaint R8-2023-0056 to the City of Norco (City) for alleged violations of the *Waste Discharge Requirements for the Riverside County Flood Control District, the County of Riverside, and the Incorporated Cities of Riverside County within the Santa Ana Region, Area Wide Urban Storm Water Runoff Management Program*, Order R8-2010-0033, NPDES Permit No. CAS618033 (MS4 Permit). The MS4 Permit regulates discharges of municipal stormwater. The MS4 Permit requires water quality management plans (WQMPs) for significant redevelopment projects and requires permittees to train their employees about permit requirements and provide training records within a reasonable time. The

MS4 Permit defines “significant redevelopment” as “the addition or replacement of 5,000 or more square feet of impervious surface on an already developed site. Significant Redevelopment does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of the facility, or emergency redevelopment activity required to protect public health and safety.” (MS4 Permit, § XII.D.2.a.)

The complaint alleges that the City violated the MS4 Permit by not requiring a WQMP for a reservoir replacement project (Violation 1). The project allegedly consisted of removal of a water storage tank at the end of its 65-year service life, the removal of 10,000 square feet of impervious pavement, and the construction of a larger water storage tank and 19,000 square feet of impervious pavement. In addition, the complaint alleges the City failed to properly train employees and failed to implement management programs listed in the Local Implementation Plan (Violation 2) and failed to provide training records within a reasonable time (Violation 3). The complaint proposes the imposition of \$401,888.88 in administrative civil liability pursuant to Water Code section 13385. The proposed liability amount was calculated pursuant to the Enforcement Policy, and includes proposed penalties of \$253,500 for Violation 1, \$97,680 for Violation 2, \$41,140 for Violation 3, and staff costs of \$9,568.88.

The City responds in its Opposition brief that the project could not have violated the MS4 permit because the project’s effect was to decrease the volume of urban runoff; the project was not “significant redevelopment” because the removal and replacement of approximately 11,000 square feet of pavement was performed over naturally impervious bedrock, so the project only added a total 1,300 square feet of impervious surface; the project was not “significant redevelopment” because it falls within the exception for routine maintenance; the City reasonably relied on its consultants’ expertise and trained its own staff upon learning that the consultants did not possess the required training; the City acted reasonably in responding to the request for training records; and various aspects of the Prosecution Team’s penalty calculations were incorrect.

The Prosecution Team Rebuttal Brief responds to each of the City’s asserted defenses.

Neither party objected to the evidence included in the initial submissions. The City’s objections to the Prosecution Team’s rebuttal evidence, if any, and the parties’ Proposed Findings of Fact and Conclusions of Law (required from the Prosecution Team, optional for the City), are due on January 19, 2024.

RECOMMENDATION:

The Santa Ana Water Board will hold a hearing to take evidence, hear testimony and consider whether to impose the civil liability proposed in Administrative Civil Liability Complaint R8-2023-0056. The Advisory Team will make recommendations, as appropriate, following the evidentiary portion of the hearing.

Upon the conclusion of the hearing, the Santa Ana 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, § 11126, subd. (c)(3).)

Attachments:

1. Administrative Civil Liability Complaint R8-2023-0056
2. Revised Notice of Public Hearing (Nov. 3, 2023)
3. Final Hearing Procedure
4. Prosecution Team: Evidence List (Table of Contents), Exhibits 1-35,¹ and Witness List
5. City of Norco: Opposition to Administrative Civil Liability Complaint No. R8-2023-0056, Evidence List, Exhibits 36-43, and Witness List
6. Prosecution Team: Rebuttal Brief, Rebuttal Evidence List (Table of Contents), and Exhibits 44-56

Members of the public may obtain copies of items 4-6 by contacting [Adam Fischer](#) or [Hero Alexander](#).

¹ Exhibits 1-4 are available on-line at the links in the Evidence List.