



**Los Angeles Regional Water Quality Control Board**

September 6, 2013

Mr. Daren T. Grilley  
City Engineer  
City of San Gabriel  
425 South Mission Dr.  
San Gabriel, CA 91776

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
Claim No. 7012 3460 0001 6365 9865

**PROPOSED RESOLUTION NO. R13-XXX AUTHORIZING REFERRAL TO THE ATTORNEY GENERAL REGARDING THE CITY OF SAN GABRIEL COLLECTION SYSTEM**

Dear Mr. Grilley,

This letter is intended to advise interested parties that the prosecution staff of the Regional Water Quality Control Board, Los Angeles Region (Regional Board) has proposed that the Regional Board hold a hearing to request the California Attorney General seek judicial civil enforcement under California Water Code sections 13350, 13385, and appropriate injunctive relief against the City of San Gabriel based on noncompliance with State Water Resources Control Board Order No. 2006-0003-DWQ.

Please find attached the proposed Resolution No. R13-XXX referring the matter to the California Attorney General. A staff report providing information in support of the prosecution staff's recommendation for referral is included as Exhibit A of the proposed resolution. Consideration of the proposed resolution will be at a public hearing to be held on October 3, 2013 at a location to be determined.

Any comments regarding these documents must be submitted to the attention of Ms. Barbara Guia no later than 5:00 pm on September 18, 2013. If you have questions regarding this matter, please contact Mr. Russ Colby at (213) 620-6373 or Ms. Barbara Guia at (213) 620-6361.

Sincerely,

A handwritten signature in cursive script that reads "Paula Rasmussen".

Paula Rasmussen  
Assistant Executive Officer

Enclosures:

Proposed Resolution No. R13-XXX

cc: (See Mailing List)

**MAILING LIST**

Laura Drabandt, State Water Resources Control Board, Office of Enforcement  
Jennifer Fordyce, State Water Resources Control Board, Office of Chief Counsel  
Russell Norman, State Water Resources Control Board, Division of Water Quality  
Matthew Buffleben, State Water Resources Control Board, Office of Enforcement  
Ken Greenberg, Environmental Protection Agency, Region 9  
Alix Hobbs, Heal the Bay  
Liz Crosson, Los Angeles Waterkeeper  
Grace Robinson Chan, County Sanitation Districts of Los Angeles County  
Joe Baiocco, Los Angeles County Flood Control District  
Jacqueline Taylor, Los Angeles County Department of Public Health

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION

RESOLUTION NO. R13-XXX

AUTHORIZING REFERRAL TO THE ATTORNEY GENERAL  
REGARDING THE LACK OF FUNDS FOR INFRASTRUCTURE MAINTENANCE  
BY THE  
CITY OF SAN GABRIEL

- A. WHEREAS, the City of San Gabriel (hereinafter referred to as Discharger), operates and maintains approximately 72 miles of a wastewater collection system, in which all 72 miles are more than 70 years-old. The wastewater collection system is tributary to the Los Angeles County Sanitation District Joint Outfall System.
- B. WHEREAS, the Discharger is enrolled under State Water Resources Control Board Order No. 2006-0003-DWQ (State Wide Waste Discharge Requirements for Sanitary Sewer Systems), also known as the Sanitary Sewer System (SSS) WDR. The SSS WDR regulates sanitary sewer systems greater than one mile in length that collect and/or convey untreated or partially treated wastewater to a publicly owned treatment facility in the State of California. The wastewater is susceptible of containing high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants which can degrade water quality and impact beneficial uses.
- C. WHEREAS, the Discharger has reported thirteen (13) SSOs into the SSO database, in accordance with the SSS WDR, between April 9, 2007 and January 2, 2013, resulting in the discharge of 4,100 gallons of untreated wastewater. Of that total, 1,505 gallons of wastewater was recovered, and 2,205 gallons were discharged to surface waters.
- D. WHEREAS, four (4) of the thirteen (13) SSOs reached waters of the State and the United States.
- E. WHEREAS, the discharges of untreated wastewater may have adversely impacted waters of the State and the United States and the beneficial uses thereof, including but not limited to municipal and domestic supply, industrial process supply, ground water recharge, water contact recreation, non-water contact recreation, warm freshwater habitat, and wildlife habitat.
- F. WHEREAS, the Los Angeles Regional Water Quality Control Board (Regional Board) is a state agency, whose primary authority under the Porter-Cologne Water Quality Control Act (at California Water Code § 13000 et seq.; hereafter Water Code) is regulating, enforcing, and ensuring the quality of the waters of the State.

- G. WHEREAS, after considering the Staff Report, attached hereto as Exhibit A and incorporated by reference, the Regional Board finds it necessary and appropriate to refer this matter to the California Attorney General's Office to seek injunctive relief, bring other applicable causes of action, and/or judicially imposed civil liabilities under applicable sections of the Water Code.
- H. WHEREAS, all enforcement options have been considered. Any Regional Board enforcement order (e.g., Cleanup and Abatement Order, Cease and Desist Order, or Time Schedule Order) may lead to compliance; however, if compliance with an order are not achieved, the Regional Board would follow up with an Administrative Civil Liability (ACL) assessing monetary penalties. Because the ultimate goal for the Discharger is compliance with the SSS WDR, a Regional Board issued ACL assessing only monetary penalties may not be the best and most direct remedy to fix the shortcomings of the Discharger's sanitary sewer system.
- I. WHEREAS, given the age of the Discharger's infrastructure, the lack of funds for significant operation and maintenance of the infrastructure, and the failure to implement critical aspects of its Sewer System Management Plan, referral to the California Attorney General's Office will allow the Regional Board to pursue more appropriate civil liability and injunctive relief than would otherwise be allowed if the Regional Board pursued an administrative liability action. In particular, the ability to pursue injunctive relief would allow the Regional Board, through the California Attorney General's Office, to place the Discharger under a judicially enforceable timeline to make the needed improvements to the sewer infrastructure and management.
- J. WHEREAS, the Discharger has caused or permitted raw sewage to be deposited in or on waters of the State and is—at a minimum—civilly liable under Water Code Section 13350(a). Under Water Code section 13350(d), a court may impose such civil liability either on a daily basis not to exceed fifteen thousand dollars (\$15,000) for each day the violation occurs or on a per gallon basis not to exceed twenty dollars (\$20) for each gallon of waste discharged. The Discharger may also be civilly liable under Water Code section 13385 for discharging waste into waters of the United States without authorization and violating the prohibitions contained in the Water Quality Control Plan for the Los Angeles Region. Under Water Code section 13385, a court may impose civil liability of up to twenty-five dollars (\$25) for each gallon of waste discharged but not cleaned up in excess of one thousand gallons and up to twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.
- K. WHEREAS, Water Code section 13350(g) requires the Regional Board to hold a hearing, with due notice of the hearing given to all affected persons, prior to requesting the Attorney General to petition a court to impose civil liability under Water Code section 13350. On August 26, 2013, notice was given to the Discharger regarding this hearing. October 3, 2013, the Regional Board held such

a hearing in compliance with section 13350(g), and considered the testimony and evidence offered at the hearing and in the record.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Regional Board hereby authorizes the Executive Officer to request that the Attorney General seek civil liabilities under the Water Code, including, but not limited to, Water Code sections 13350(a) and 13385, as appropriate, bring other applicable causes of action, and/or seek other relief as may be appropriate against the Discharger.
2. The Regional Board hereby authorizes the Executive Officer to participate in any settlement discussions regarding the resolution of the violations at issue. The Regional Board retains its authority to approve any proposed settlement of the alleged violations.

I, Samuel Unger, Executive Officer, hereby certify that the foregoing is a full, true, and correct copy of the Resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, at its regular meeting on October 3, 2013.

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Samuel Unger, P.E.  
Executive Officer

Exhibit A attached

**EXHIBIT A: DRAFT STAFF REPORT FOR CONSIDERATION OF RESOLUTION  
NO. R13-XX REFERRING THE CITY OF SAN GABRIEL TO THE CALIFORNIA  
OFFICE OF THE ATTORNEY GENERAL**

**INTRODUCTION:**

Regional Water Quality Control Board (Regional Board) staff is presenting Resolution No. R13-XXX, for the Regional Board's consideration, referring the City of San Gabriel (Discharger) to the Attorney General's Office (AGO) for multiple violations of its waste discharge requirements.

Resolution No. R13-XXX requests that the AGO seek injunctive relief, bring other applicable causes of action, and/or seek judicially imposed civil liabilities under California Water Code sections 13350 and/or 13385 as appropriate against the Discharger.

The Regional Board's enforcement program has established a streamlined case referral process for administrative or civil enforcement cases to the AGO. Due to the significant issues explained in detail below, including the absence of a proper rate structure, and the Discharger's failure to implement critical aspects of its sanitary sewer management plan (SSMP), the Regional Board believes that this case is warranted for referral to the AGO. Based on preliminary discussions with the AGO, the office is willing to enforce against the Discharger.

**BACKGROUND:**

SSS WDR

On August 16, 2006, the Discharger was enrolled under State Water Resources Control Board Order No. 2006-0003-DWQ (Statewide General Waste Discharge Requirements for Sanitary Sewer Systems)<sup>1</sup>, also known as the SSS WDR. The SSS WDR regulates all federal and state agencies, municipalities, counties, districts, and other public entities that own or operate sanitary sewer systems greater than one mile in length that collect and/or convey untreated or partially treated wastewater to a publically owned treatment facility in the State of California. The wastewater is susceptible of containing high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants which can degrade water quality and impact beneficial uses.

The discharges of untreated wastewater may adversely impacted waters of the State and the United States and the beneficial uses thereof, including but not limited to municipal and domestic supply,

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<sup>1</sup> All references to the SSS WDR Order No. 2006-0003-DWQ include its accompanying Monitoring and Reporting Program NO. 2006-0003-DWQ, and State Water Board Order No. WQ 2008-0002-EXEC.

industrial process supply, ground water recharge, water contact recreation, non-water contact recreation, warm freshwater habitat, and wildlife habitat.

SSS WDR Prohibitions C.1 and C.2 prohibit any sanitary sewer overflow (SSO) that results in a discharge of treated or partially treated wastewater to waters of the United States, or SSO that creates a nuisance as defined in Water Code section 13050(m).

SSS WDR Provision D.13 requires enrollees to develop and implement a system-specific Sewer System Management Plan (SSMP) which includes provisions to provide a plan and schedule to ensure proper and efficient management, operation, and maintenance of sanitary sewer systems. The SSMP must be approved by the deadlines listed in the SSMP Time Schedule contained in the SSS WDR.

SSS WDR Provision D.13.iv.(c) requires enrollees to develop a rehabilitation and replacement plan to identify and prioritize system deficiencies and implement short-term and long-term rehabilitation actions to address each deficiency. The program should include regular visual and TV inspections of manholes and sewer pipes. The rehabilitation and replacement plan should also include a capital improvement plan that addresses proper management and protection of the infrastructure assets. The plan shall include a time schedule for implementing the short-term and long-term plans plus a schedule for developing the funds needed for the capital improvement plan.

SSS WDR General Monitoring and Reporting Requirements Provision G.1 through G.4 include notification requirements that require the Discharger to report, within defined timeframes, SSOs to the California Integrated Water Quality System (CIWQS) Online SSO Database.

#### Sanitary Sewer System Characteristics

The Discharger operates and maintains 72 miles of gravity sewer pipe and 1,350 manholes. The system is composed of 65.53 miles of 8-inch diameter lines, 2.41 miles of 10-inch diameter lines and 2.84 miles of 12-inch diameter lines. Approximately 65% of the system was constructed between 1920 and 1939, 30% of the system was constructed between 1940 and 1959, and 5% of the system was constructed between 1960 and 1979.

#### Sanitary Sewer Overflows (SSOs)

From the date of the Discharger's enrollment on August 16, 2006 to the present, the Discharger has reported thirteen (13) SSOs, discharging a total of 4,100 gallons of raw sewage, of which 2,205 gallons reached surface waters. A table of SSOs reported in CIWQS is attached.

The Discharger's 2009 Sewer Master Plan identifies that approximately 58% of the system is currently over capacity, flowing at more than 50% to more than 100% percent full (under pressure) during peak flow conditions. The Discharger's survey of the sewer system determined that 70% of the system needed repairs and 0.6% of the system needed high priority repairs. The Capital Improvement Program section of the 2009 Sewer Master Plan identifies and prioritizes funds to address the capacity and structural condition deficiencies of the sewer system.

Closed circuit television (CCTV) inspections and assessments of 10 miles of the Discharger's 72 mile system were conducted by the Discharger and "Hot Spots" were identified in the 2009 Sewer Master Plan. These "Hot Spots" are geographically located in the vicinity of concentrations of restaurants and food establishments. However, to date the Discharger does not have a formal Fats, Oils and Grease (FOG) program in place.

#### 2012 Inspection

On May 1, 2012, the Regional Board, State Board, and USEPA conducted an inspection of the Discharger's collection system. On November 21, 2012 the Regional Board issued a Notice of Violation (NOV) based on the inspection findings. The following are some of the findings and violations cited in the NOV:

- As of the date of the inspection, the Discharger violated the SSS WDR by discharging untreated wastewater on 5 separate occasions since January 1, 2007. One of these SSOs reached surface waters. Since the May 1, 2012 inspection, the Discharger has discharged untreated wastewater on another 8 occasions, resulting in a total of 13 separate SSOs since January 1, 2007, four of which have reached surface waters. A total of 2,205 gallons of wastewater was discharged to surface waters.
- The Discharger failed to conduct post-SSO briefings with collections system staff and management as required by the Discharger's Sewer System Management Plan.
- The Discharger failed to have SSO reports certified in CIWQS, as required by Section C.1 of Order No. 2006-0003-DWQ Monitoring and Reporting Program (MRP).
- The Discharger failed to report an October 24, 2011 spill in CIWQS, as required by Section A.4 and Section A.5 of Order No. 2006-0003-DWQ MRP.



- The Discharger failed to certify six (6) Category 1 and 2 SSOs in CIWQS, as required by Section A.4 and Section A.5 of Order No. 2006-0003-DWQ MRP.
- The Discharger failed to timely certify two (2) SSOs in CIWQS, as required by Section A.4 and Section A.5 of Order No. 2006-0003-DWQ MRP.
- The Discharger failed to maintain SSO records for a minimum of five years, as required by Section B.1 of Order No. 2006-0003-DWQ MRP.
- The Discharger failed to implement its approved Sanitary Sewer System Management Plan (SSMP), as required by Section D.11 of Order No. 2006-0003-DWQ.
- The Discharger failed to conduct regular CCTV or visual inspections of its sanitary sewer system as part of the Discharger's SSMP.
- The Discharger failed to implement a FOG program as part of the Discharger's SSMP, as required by Section 13.vii of Order No. 2006-0003-DWQ.

2013 Meetings with The City of San Gabriel

On May 22, 2013, The Regional Board met with representatives from the City of San Gabriel to discuss the Discharger's response to the November 21, 2012 NOV. In addition to discussing the items mentioned above, the Discharger provided staff with a brief presentation of its 2013 Sewer User Fee Study. Currently the Discharger does not have a sewer user fee in place. The Discharger collects a sewer connection fee for new connections to the system and a sewer impact fee. The operation and maintenance of the Discharger's sewer system is funded primarily through the Discharger's General Fund.

On August 21, 2013, the Regional Board met once again with representatives from the City of San Gabriel to discuss the status of the Discharger's compliance with the SSS WDRs. The Discharger provided staff with the following updated information:

- The Discharger presented the need for implementation of a sewer user fee to their City Council on August 20, 2013. The City Council's approval of a sewer user fee is forthcoming.
- The Discharger's 2013 Sewer Impact Fee Study identified the need for \$30 million in repair and capacity improvements of the sanitary sewer system.

- The Discharger's current list of Sewer System Improvements-Unfunded Projects are expected to begin funding in the fiscal years 2014-15 and 2015-16. All unfunded projects are expected to be fully funded in fiscal year 2016-2017, as a result of the approved sewer user fee.
- The Discharger has prepared a draft FOG ordinance which is scheduled to be presented at the September 2013 City Council meeting.

## **OUTSTANDING PROGRAMMATIC COMPLIANCE ISSUES**

On November 21, 2012, the Regional Board issued the Discharger a Notice of Violation for violations of the SSS WDR as described in detail above.

After discussion with City representatives on May 22, 2013, the following concerns remain:

- As mentioned in the Discharger's 2009 Master Plan, portions of the Discharger's sanitary sewer system pipelines are over 75 years old, as a majority of the system was constructed between 1939 and 1942. While the Discharger has outlined its replacement and capital improvement program in its Sewer Master Plan and its 2013-2014 Capital Improvement Program, these measures have yet to be implemented.
- The Discharger remains without a sewer user fee. The lack of a sewer user fee program severely limits the Discharger's ability to implement capital improvement projects and to address capacity and system deficiencies. A sewer user fee is necessary to generate additional revenue to fund system improvements. Without funding to address the shortcomings in the collection system the potential exists for additional SSOs.
- The Discharger conducts CCTV and visual inspections of only 10% of its sanitary sewer system annually as part of the Discharger's Sewer System Management Plan. Given that the Discharger's sewer system consists of approximately 72 miles of sewer lines, more regular CCTV inspections are recommended to assist in identifying and prioritizing system deficiencies.
- The Discharger has identified that it has a FOG problem and while it conducts a "hot spot" maintenance program, the Discharger has not yet adopted a FOG ordinance and therefore is not able to implement a FOG program pursuant to the Discharger's SSMP.

**OPTIONS:** All enforcement options have been considered. Any Regional Board enforcement order (Cleanup and Abatement Order, Cease and Desist Order, or Time Schedule Order) may lead to compliance. If compliance with an order is not achieved, the Regional Board would follow up with an Administrative Civil Liability (ACL) complaint assessing monetary penalties. However, the ultimate goal is to have the Discharger come into and maintain compliance with the SSS WDR. Therefore, any Regional Board enforcement should emphasize this goal.

Given the multiple significant issues involved in this case, referral to the AGO will allow the Regional Board to better focus on and ensure permanent fixes to the Discharger's sewer program than would otherwise be allowed if the Board pursued another administrative enforcement action. In particular, the ability to impose injunctive relief, bring other applicable causes of action, and/or impose judicially civil liabilities would allow the Regional Board, through the AGO, to place the Discharger under a judicially enforceable timeline to make the needed improvements to the sewer infrastructure and management. Furthermore, the Discharger may be able to leverage the judicially enforceable order to provide resident voters with the additional incentive needed to pass the sewer user fee assessments through the Proposition 218 process.

**RECOMMENDATION:**

Staff recommends that the Regional Board adopt the Resolution referring the City of San Gabriel violations of the SSS WDR to the AGO for civil liabilities and injunctive relief.



California Integrated Water Quality System Project (CIWQS)

SSO Public Report - Detail Page

Here is the detail page of your SSO public report search for the selected region, responsible agency, or collection system. These results correspond to the following search criteria:

SEARCH CRITERIA: [\[REFINE SEARCH\]](#)

- Spill Type (sso\_cat1\_2)
- Start Date (01/01/2007)
- End Date (09/06/2013)

The table below presents important details for all sewage discharge locations, as submitted through individual SSO reports, which meet the search criteria selected. If data is not shown for a particular field, it means the Enrollee did not provide the information and was not required to do so. To view the entire SSO report for a specific sewage discharge location, please select the corresponding EVENT ID.

DRILLDOWN HISTORY: [\[GO BACK TO SUMMARY PAGE\]](#)

REGION: 4

[\[VIEW PRINTER FRIENDLY VERSION\]](#)

<u>EVENT ID</u>	<u>Region</u>	<u>Responsible Agency</u>	<u>Collection System</u>	<u>SSO Category</u>	<u>Start Date</u>	<u>SSO Address</u>	<u>SSO City</u>	<u>SSO Vol</u>	<u>Vol of SSO Recovered</u>	<u>Vol of SSO Reached Surface Water</u>	<u>SSO Failure Point</u>	<u>WDID</u>
<a href="#">650873</a>	4	San Gabriel City	San Gabriel City CS	Category 2	2007-04-09 21:00:00.0	Orange Street	San Gabriel	350	350	0		4SSO10427
<a href="#">654240</a>	4	San Gabriel City	San Gabriel City CS	Category 2	2007-06-12 09:00:00.0	500 W Valley Valley Blvd Boulevard	San Gabriel	10	10	0		4SSO10427
<a href="#">711718</a>	4	San Gabriel City	San Gabriel City CS	Category 1	2008-01-12 11:15:00.0	1039-1045 Valley Blvd Boulevard	San Gabriel	500	300	200		4SSO10427
<a href="#">719007</a>	4	San Gabriel City	San Gabriel City CS	Category 2	2008-06-04 05:10:00.0			150	0	0		4SSO10427
<a href="#">749817</a>	4	San Gabriel City	San Gabriel City CS	Category 2	2010-02-08 09:00:00.0	Intersection Del Mar Avenue	San Gabriel	40	40	0		4SSO10427
<a href="#">749818</a>	4	San Gabriel City	San Gabriel City CS	Category 2	2010-02-09 08:15:00.0	5818 Charlotte Avenue	San Gabriel	100	100	0		4SSO10427
<a href="#">773585</a>	4	San Gabriel City	San Gabriel City CS	Category 2	2011-05-15 14:00:00.0	117 Norwood Road	San Gabriel	100	0	0	Main	4SSO10427
<a href="#">773593</a>	4	San Gabriel City	San Gabriel City CS	Category 2	2011-09-21 21:00:00.0	121 Valley Boulevard	San Gabriel	100	0	0	Private property grease interceptor	4SSO10427
<a href="#">776380</a>	4	San Gabriel City	San Gabriel City CS	Category 2	2011-05-15 14:45:00.0	117 Norwood Place	San Gabriel	100	90	0	Main	4SSO10427
<a href="#">776382</a>	4	San Gabriel City	San Gabriel City CS	Category 2	2011-06-21 05:00:00.0	1103 King Street	San Gabriel	30	0	0	Main	4SSO10427
<a href="#">785377</a>	4	San Gabriel City	San Gabriel City CS	Category 2	2012-08-21 01:15:00.0			300	50	250	Main	4SSO10427
<a href="#">788194</a>	4	San Gabriel City	San Gabriel City CS	Category 2	2012-11-16 18:00:00.0	Valley Boulevard	San Gabriel	70	65	5	Main	4SSO10427
<a href="#">789639</a>	4	San Gabriel City	San Gabriel City CS	Category 1	2013-01-02 11:55:00.0	Del Mar Avenue	San Gabriel	2,250	500	1,750	Main	4SSO10427