

California Regional Water Quality Control Board,
San Diego Region

**NOTICE OF PROPOSED SETTLEMENT OF ADMINISTRATIVE CIVIL
LIABILITY AGAINST THE CITY OF ESCONDIDO FOR VIOLATIONS
ALLEGED IN COMPLAINT NO. R9-2005-0265**

OPPORTUNITY FOR PUBLIC COMMENT

WRITTEN COMMENTS DUE JULY 26, 2006

PUBLIC HEARING ON AUGUST 16, 2006

On August 16, 2006 the Regional Water Board will consider an offer by the City of Escondido to settle proposed civil liability for violations alleged in Complaint No. R9-2005-0265 for \$1,152,150, of which the City will pay \$690,000 and be released from payment of \$462,150 on condition that the City undertakes specified actions. Complaint No. R9-2005-0265 recommends imposition of civil liability in the amount of \$1,797,150 against the City of Escondido for multiple alleged violations of Orders Nos. 93-70; 96-31, as amended; 99-72; and R9-2003-0394; the alleged violations included 393 effluent limit violations subject to mandatory minimum penalties (MMP) under section 13385 of the Water Code; the remainder of the alleged violations were subject to discretionary administrative civil liability (ACL). The proposed settlement also would include a release of \$645,000 in liability for alleged violations subject to MMP that the City asserts would be exempt from MMP under defenses applicable to MMP violations.

If the Regional Water Board accepts the proposed settlement, the Regional Water Board will issue an Order reflecting the following provisions:

1. The City of Escondido will pay \$690,000. Payment in full shall be made within 30 days of adoption of the Order to the State Water Resources Control Board, for deposit into the Cleanup and Abatement Account. This amount is based on the following calculations:
 - a. \$657,000 for 219 alleged effluent limitation violations that occurred between May 3, 2004 and August 17, 2004, in the discharge from the Hale Avenue Resource Recovery Facility (HARRF) in violation of Order No. 99-72, NPDES No. CA0107981, *Waste Discharge Requirements for the City of Escondido, Hale Avenue Resource Recovery Facility, Discharge to the Pacific Ocean via the Escondido Land Outfall and the San Elijo Ocean Outfall*. Effluent limit violations of Order No. 99-72 are subject to MMP of \$3,000 per violation.
 - b. \$33,000 for 11 alleged effluent limitation violations that occurred between January 9, 2005 and February 25, 2005 as a result of the discharge from the HARRF in violation of Order No. R9-2003-0394, NPDES No. CA 0108944, *Waste Discharge Requirements for the*

City of Escondido, Hale Avenue Resource Recovery Facility, Intermittent Wet Weather Discharge to Escondido Creek, San Diego County. Effluent limit violations of Order No. R9-2003-0394 are subject to MMP of \$3,000 per violation.

2. The City will be released from the imposition of \$462,150 in discretionary liability conditioned on submission to the Regional Water Board of the final report of the study conducted at the treatment plant entitled “Wastewater Treatment and Disposal Facilities Capacity Study” within three weeks of its completion and the final report of the flow projection study entitled “Flow Project Report” within three weeks of its completion.

The release of \$462,150 in discretionary civil liability includes:

- a) Recommended civil liability of \$75,850 under Section 13350 of the Water Code for fourteen alleged reporting violations and failure to comply with the final compliance date contained in Cease and Desist Order No. 96-31 and addenda thereto;
 - b) Recommended civil liability of \$381,500 under Section 13350 of the Water Code for two unauthorized discharges to Escondido Creek in violation of Order Nos. 99-72 and R9-2005-0394; and
 - c) Recommended civil liability of \$4,800 under Section 13350 of the Water Code for alleged violations of effluent limitations contained Order No. 93-70 *Waste Discharge Requirements for the City of Escondido Hale Avenue Regional Reclamation Facility, San Diego County.* Effluent limit violations of Order No. 93-70 are not subject to MMP.
3. The City will be released from the imposition of \$645,000 in discretionary liability for alleged effluent limit violations exempt from Mandatory Minimum Penalties under defenses available to the City:

- a. Single Operational Upset (SOU)

The City contends that 174 of the 393 alleged effluent limitation violations that occurred between May 3, 2006 and August 17, 2006 were caused by a “single operational upset” (SOU) and should be treated as a single violation. For the purpose of imposition of MMP, effluent violations occurring during the SOU (extending up to a maximum of 30 days) shall be collapsed into a single \$3,000 penalty in accordance with criteria established in Water Code section 13385(f)(1).¹

¹ California Water Code section 13385(f)(2) states that when calculating mandatory minimum penalties, violations due to a single operational upset shall be treated as a single violation even if the operational upset results in violations of more than one effluent limitation, but in no case shall the single violation period exceed thirty days.

b. Unanticipated Natural Disaster

The City contends that 47 alleged effluent flow limitation violations in January, February, and March 2005 were caused by severe unanticipated rainfall events that were exceptional and could not have been prevented or avoided, and therefore are exempt from MMP in accordance with section 13385(j)(1)(B) of the Water Code.

Regulations of the U.S. Environmental Protection Agency require a reasonable opportunity for public participation in any proposed settlement of the civil liability resulting from violation of requirements governing discharge of pollutants from point sources to waters of the United States subject to the federal Clean Water Act and the National Pollutant Discharge Elimination System regulations. Accordingly, interested persons will be given 30 days from June 27, 2006, to submit written comments on the proposed settlement. Written comments on this matter received after 5:00 P.M. on July 26, 2006, will not be considered by the Regional Water Board.

Written material should be submitted to the Regional Water Board's office located at 9174 Sky Park Court, Suite 100, San Diego, California 92123. If the submitted written material is more than 5 pages or contains foldouts, maps, etc., 20 copies must be submitted for distribution to the Regional Water Board members and staff, and for distribution to the public at the Regional Water Board meeting. E-mail comments on this matter will be accepted and provided to the Regional Water Board as long as the total submittal (including attachments) does not exceed five printed pages in length and they are received by July 26, 2006. E-mail comments on the proposed settlement should clearly indicate their relation to the proposed Escondido settlement and should be sent to: RStewart@waterboards.ca.gov.

The August 16, 2006 Regional Water Board Meeting will be held at 9:00 a.m. at the San Diego Regional Water Quality Control Board Office at the address noted above.

If you have any questions, please contact Rebecca Stewart at (858) 467-2966 or by email at RStewart@waterboards.ca.gov. You also may visit the Regional Water Board website for more information on this project at www.waterboards.ca.gov/sandiego.

John H. Robertus
Executive Officer

June 27, 2006