

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

Tentative ORDER NO. R9-2009-0172

**Item No. 11
Doc. No. 2**

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST
CITY OF SAN DIEGO
SEWAGE COLLECTION SYSTEM
FOR
VIOLATIONS OF ORDER NO. 2006-0003-DWQ
DISCHARGE OF SEWAGE INTO LAKE HODGES**

The California Regional Water Quality Control Board, San Diego Region (Regional Board) having held a public hearing on November 18, 2009, to hear evidence and comments on the allegations contained in Administrative Civil Liability Complaint R9-2009-0042, dated July 22, 2009, and deliberating on the evidence presented at the public hearing and in the record, after determining the allegations contained in the Complaint to be true, having provided public notice thereof and not less than thirty (30) days for public comment and on the recommendation for administrative assessment of Civil Liability in the amount of \$620,278 finds as follows:

1. The City of San Diego (City) owns and operates a large sewage collection system with approximately 3,000 miles of sewer lines and an estimated total wastewater flow of 180 million gallons per day.
2. The City is enrolled under California State Water Resources Control Board Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* (WDID No. 9SSO10658) that requires the City to operate and maintain its sewage collection system to prevent Sanitary Sewer Overflows (SSOs).
3. Prohibition C.1. of Order No. 2006-0003-DWQ states that “[a]ny SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.” Order No. 2006-0003-DWQ defines Sanitary Sewer Overflows as “[a]ny overflow, spill, release, discharge or diversion of untreated or partially treated wastewater from a sanitary sewer system.”
4. On or about August 20, 2007, and until August 24, 2007, the City discharged approximately 381,185 gallons of untreated wastewater from its Manhole No. K09N-108 (located just south of Escala Drive in Rancho Bernardo) into Lake Hodges, a water of the United States. In response to this event the Regional Board issued Notice of Violation No. R9-2007-0199 to the City on October 24, 2007, alleging a violation of Prohibition C.1. of Order No. 2006-0003-DWQ. On July 22, 2009, after investigating the spill and reviewing the information submitted by the City, the

Regional Board issued Administrative Civil Liability Complaint No. R9-2009-0042 in the amount of \$620,278 to the City for allegedly violating Prohibition C.1. of Order No. 2006-0003-DWQ.

5. Issuance of the Order is an enforcement action taken by a regulatory agency and is exempt from the provision of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This action is also exempt from the provisions of CEQA in accordance with section 15061(b)(3) of Chapter 3, Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
6. Consideration of the factors prescribed in Water Code section 13385(e) based upon information available to the Regional Board prior to the hearing and described in greater detail in the Staff Report for Complaint R9-2009-0042 supports the assessment of civil liability in the amount of \$620,278 as follows:
 - a. \$1.50 per gallon multiplied by 380,185 gallons of discharged sewage [381,185 gallons – 1,000 gallons cleaned up pursuant to Water Code § 13385(c)(2)] for a total of \$570,278; and
 - b. \$10,000 per day of discharge multiplied by five (5) days of discharge for a total of \$50,000.
7. The Regional Board incurred costs of \$39,900 to prosecute the enforcement action; the costs include investigation, preparation of enforcement documents, communicating with the City and preparation of materials for public review and hearing.

IT IS HEREBY ORDERED, pursuant to Water Code section 13385, that civil liability be imposed upon the City of San Diego in the amount of \$620,278.

1. The City of San Diego shall submit a check to the Regional Board in the amount of six hundred and twenty thousand two hundred seventy-eight dollars (\$620,278) payable to the “State Water Resources Control Board” for deposit into the State Water Pollution Cleanup and Abatement Account within thirty (30) days of adoption of this Order.
2. Fulfillment of the City of San Diego’s obligations under this Order constitutes full and final satisfaction of any and all liability for each allegation in Complaint No. R9-2009-0042.

3. The Executive Officer is authorized to refer this matter to the Office of the Attorney General for collection or other enforcement if the City of San Diego fails to comply with payment of the liability as detailed in paragraph 1.

I, John H. Robertus, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region on November 18, 2009.

Tentative

JOHN H. ROBERTUS
Executive Officer