

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

In the matter of:

**City of Oceanside
Haymar Road Gravity Sewer Spill to
Buena Vista Creek, Buena Vista Lagoon
and the Pacific Ocean, San Diego
County**

Place ID: 631595

**COMPLAINT NO. R9-2012-0036
FOR
ADMINISTRATIVE CIVIL LIABILITY**

**Violations of Order Nos.
2006-0003-DWQ and
R9-2007-0005, Waste Discharge
Requirements for Sanitary Sewer
Systems and Sewage Collection
Agencies in the San Diego Region,
collectively.**

February 22, 2012

THE CITY OF OCEANSIDE IS HEREBY GIVEN NOTICE THAT:

1. The City of Oceanside (hereinafter the City) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) may impose civil liability pursuant to section 13385 of the California Water Code (Water Code).
2. This Administrative Civil Liability Complaint is issued under authority of Water Code section 13323.

WASTE DISCHARGE REQUIREMENTS

3. The City owns and operates the 15-inch vitrified clay gravity sewer main located adjacent to and within Buena Vista Creek, at the northern border of the City of Carlsbad, San Diego County. The City is required to operate and maintain its sewage collection system in compliance with requirements of State Water Resources Control Board Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* and San Diego Water Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region*.
 4. Prohibition C.1 of Order No. 2006-0003-DWQ states "Any SSO that results in the discharge of untreated or partially treated wastewater to waters of the United States is prohibited."
 5. Prohibition C.2 of Order No. 2006-0003-DWQ states "Any SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance as defined in California Water Code Section 13050(m) is prohibited."
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6. Prohibition B.1 of Order No. R9-2007-0005 states "The discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant is prohibited."
7. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. No such NPDES Order, allowing the discharge of raw, untreated sewage from a sewage collection system to surface waters exists.

VIOLATIONS SUBJECT TO THIS COMPLAINT

8. The City violated Prohibitions C.1 and C.2 of Order No. 2006-0003-DWQ, Prohibition B.1 of Order No. R9-2007-0005, section 301 of the Clean Water Act and Water Code section 13376 by discharging 5.35 million gallons of untreated sewage to Buena Vista Creek, Buena Vista Lagoon and ultimately the Pacific Ocean, all waters of the State of California and waters of the United States, starting December 23, 2010 and ending December 28, 2010.
9. The details of these violations are set forth in full in the accompanying Technical Analysis, which is incorporated herein by this reference as if set forth in full.

MAXIMUM LIABILITY

10. Water Code section 13385 provides that any person who violates any waste discharge requirement issued by a Regional Water Board shall be civilly liable. Water Code section 13385(c)(2) provides that civil liability may be assessed on a per gallon basis, and may not exceed \$10 for each gallon of waste discharged.
11. Based on the discharge of 5,349,000 gallons of untreated sewage to Buena Vista Creek, Buena Vista Lagoon and the Pacific Ocean, the total maximum liability under Water Code section 13385(c)(2) for this discharge is \$53,490,000.

MINIMUM LIABILITY

12. The Water Quality Enforcement Policy further instructs the Regional Water Boards to assess liability against a violator at least 10 percent higher than the economic benefit realized from the violation so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.

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13. As detailed in the incorporated Technical Analysis, and based on an economic benefit amount of \$6,420, the minimum liability amount the San Diego Water Board should assess is \$7,062.

PROPOSED LIABILITY

14. The amount of discretionary assessment proposed is based upon consideration of factors contained in Water Code section 13385(e). Section 13385(e) specifies the factors that the San Diego Water Board shall consider in establishing the amount of discretionary liability for the alleged violations, which include: the nature, circumstance, extent, and gravity of the violations, the ability to pay, the effect on ability to continue in business, prior history of violation, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
15. Based on the penalty calculation methodology in section VI of the Water Quality Enforcement Policy, it is recommended that the San Diego Water Board impose civil liability against the City of Oceanside in the amount of **\$1,572,850** for the discharge of untreated sewage to Buena Vista Creek, Buena Vista Lagoon and the Pacific Ocean, from December 23 – 28, 2010. Attachment 1 provides a summary table of the decisions made in the methodology to determine the final liability amount.

Dated this 22nd day of February, 2012,



JAMES G. SMITH

Assistant Executive Officer

Signed pursuant to the authority delegated
by the Executive Officer to the Assistant
Executive Officer.

Attachment 1: Summary of Enforcement Policy Penalty Methodology Decisions

CIWQS: Reg Measure ID: 380783
Place ID: 631590
Party ID: 32483
Violation IDs: 888091

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Attachment No. 1
Discharger: City of Oceanside

Penalty Methodology Decisions
ACL Complaint No. R9-2012-0036

Step 1: Potential Harm Factor				
Violations	Harm/Potential Harm to Beneficial Uses [0 - 5]	Biological or Thermal Characteristics [0 - 4]	Susceptibility to Cleanup or Abatement [0 or 1]	Total Potential for Harm [0 - 10]
Sewage Spill	2	3	1	6

Step 2: Assessments for Discharge Violations					
Violations	Per Gallon Factor				Statutory / Adjusted Max per [\$]
	Potential for Harm [0 - 10]	Deviation from Requirement [minor, moderate, major]	High Volume Discharges	Total Per Gallon Factor	
Sewage Spill	6	major	yes	0.22	\$2.00

Step 3: Per Day Assessments for Non-Discharge Violations				
Violations	Per Day Factor			Statutory/ Adjusted Max [\$]
	Potential for Harm [minor, moderate, major]	Deviation from Requirement [minor, moderate, major]	Total Per Day Factor	
na	na	na	na	na

Step 4: Adjustments					
Violations	Culpability [0.5 - 1.5]	Cleanup and Cooperation [0.75 - 1.5]	History of Violations	Multiple Violations (Same Incident)	Multiple Day Violations
sewage spill	0.8	0.75	1.1	yes	na

Step 5: Total Base Liability Amount
Sum of Steps 1- 4
\$1,553,350

Step 8: Economic Benefit
\$6,420

Step 6: Ability to Pay/Continue in Business
[Yes, No, Partly, Unknown]
Yes

Step 9	
Minimum Liability Amount	Maximum Liability Amount
\$7,082	\$53,490,000

Step 7: Other Factors as Justice May Require	
Costs of Investigation and Enforcement Adjustment	Other
\$19,500	na

Step 10: Final Liability Amount
\$1,572,850