

California Regional Water Quality Control Board
San Diego Region
David Gibson, Executive Officer



Executive Officer’s Report
December 14, 2010

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Part A – San Diego Region Staff Activities

1. Personnel Report

Staff Contact: DiAnne Broussard

The Organizational Chart of the San Diego Water Board can be viewed at:
http://www.waterboards.ca.gov/sandiego/about_us/org_charts/orgchart.pdf

Departures

Environmental Scientist Linda Parady is retiring from the San Diego Water Board on December 30, 2010. Linda has a Bachelor's Degree in Biology from San Diego State University. She began her career with the State in July 1979 as a Seasonal Aide for the California Department of Fish and Game (CDFG) in San Diego and La Jolla. During part of that time she worked as a Technical Assistant in the Zoology Department at San Diego State University. In November 1982 she accepted a full time position as a Fishery Biologist with CDFG. She worked in both their Fresno and Chino offices before coming to work for the San Diego Water Board on March 8, 1993 as an Environmental Specialist. She has worked in the Water Quality Standards Unit, in the Core Regulatory Unit and in the Central Watershed Unit. She is a member of the California Native Plant Society and is an expert at identifying native plants in the San Diego area.

Water Resource Control Engineer Robert Pierce is leaving the San Diego Water Board. His last day will be January 12, 2011. He has accepted a position with the U.S. Agency for International Development as a Foreign Service Engineer. He will be working in Washington, D. C. before traveling abroad. Robert graduated from the University of California at Davis with a Bachelor's Degree in Civil Engineering. He worked as a Staff Engineer for Delta Environmental Consultants in Rancho Cordova. He accepted a position with the San Diego Water Board in August 2006. He has worked in the Site Mitigation and Cleanup Unit, the Northern San Diego County Ground Water Unit and the Central Cleanup Unit. His departure will leave more than one hole. Bobby, as he is affectionately known to his team mates, is a star on the San Diego Water Board's softball team. The team will surely suffer without him, but will play on.

Vacant positions for the State and Regional Water Boards are posted on the State Board web page at http://www.waterboards.ca.gov/about_us/employment/

2. Budget Report

Staff Contact: DiAnne Broussard

On January 8, 2010 Governor Schwarzenegger issued Executive Order S-01-10, which directed all State Agencies to take immediate steps to cap the workforce in order to achieve an additional 5 percent salary savings (for a total of 10 percent). The Division of Administrative Services

directed the San Diego Water Board to give up 3.4 positions to comply with this order. Fortunately, sufficient vacant positions exist to achieve the reduction with no threat to current employees. Staffing now stands at 66.1 PY (personal years), with five (5) vacant positions. We have been submitting requests weekly for exemption from the hiring freeze to fill two of these positions, an Environmental Program Manager I to lead the Water Quality Restoration and Standards Branch and a Staff Services Analyst to fill the Enterprise Content Management vacancy. Thus far we have not been granted approval to fill either one.

3. Girl Scouts use San Diego Water Board's Watershed Model to Earn Silver Award

Staff Contact: Laurie Walsh

San Diego Water Board staff member and Girl Scout Troop Leader Laurie Walsh, and her daughter Toire Walsh, demonstrated the storm water watershed model to children at a Women's Resource Center in San Diego. The presentation on Saturday, December 4, was part of a Girl Scout Silver Award Project. Under Laurie's supervision, the Girl Scouts designed, built, and ran an environmental science station, which featured the watershed model, where 25 children between the ages of 5 and 16 were taught about the effects polluted storm water runoff has on local creeks and the ocean. Completion of this project will earn the Girl Scout project partners the Silver Award, the highest award a Girl Scout Cadette can achieve.

4. Episodic Streams Workshop

Staff Contact: Alan Monji

On November 8 and 9, 2010, Jeremy Haas, Alan Monji, Cathryn Henning, and Bruce Posthumus attended the Episodic Streams Workshop at the Southern California Coastal Water Research Project (SCCWRP) facilities in Costa Mesa, CA. The 2-day workshop, with an optional field trip on day 3, explored the physical processes, ecological adaptations, management, and conservation challenges of episodic streams in California.

Over 60 percent of California is arid or semi-arid, and episodic streams of arid regions have a distinctive behavior in terms of the *episodic* nature of flow, sediment transport and channel change that differs markedly from rivers in humid climates or snowmelt regimes. Recognizing this distinctive nature is the first step towards developing and applying conservation and management strategies suited to episodic streams and their surrounding dryland landscapes. Most of the current concepts and tools used to evaluate stream behavior were developed on perennial (continuous flow) streams and their transfer to episodic streams can be problematic for arid and semi-arid climates like southern California. With urbanization expanding into the semi-arid landscapes of southern California and the construction of solar arrays in the desert landscape, guidance needs to be developed for evaluating potential environmental and physical impacts to episodic streams.

The workshop was organized by the State Water Board's Training Academy, University of California Berkeley, California Department of Fish and Game (DFG), and SCCWRP. Speakers included representatives from SCCWRP, DFG, Army Corps of Engineers (ACOE), State Water Board, Academia, environmental consulting, and environmental groups. Approximately 115 people attended the workshop representing the Regional Water Boards, DFG, ACOE, SCCWRP, California Energy Commission, California Geologic Survey, U.S. Forest Service, U.S. Geological Survey, California Department of Water Rights, and various consulting firms.

The organizers of the workshop setup an Episodic Stream webpage and the workshop presentations will be available on this site in the future. The website is available at:

<http://episodic.ced.berkeley.edu/#> .

5. Watershed Model Presentation to Elementary School Students

Staff Contact: Jody Ebsen and John Odermatt

On November 30, 2010, San Diego Water Board staff gave a presentation on the effects of erosion on watersheds and water quality to a 4th grade class of 32 students at Bostonia Elementary School in El Cajon. The 4th grade science curriculum includes the study of earth science and the class is currently studying erosion and weathering processes. The presentation included a discussion of erosion, storm water runoff, and pollution prevention concepts illustrated with many photographs. The presentation incorporated student participation, which allowed the students to use a physical model of a watershed to observe the effects of erosion and runoff on water quality.

Part B – Significant Regional Water Quality Issues

1. Sanitary Sewer Overflows (SSOs) September - October 2010 (*Attachment B-1*)

Staff Contact: Christopher Means

The following is a summary of the sewage spills occurring during September and October 2010 and reported and certified by October 31, 2010. Sewage Collection Agencies now report Sanitary Sewer Overflows (SSOs) on-line at the State Water Board's CIWQS database pursuant to the requirements of State Water Board Order No. 2006-0003-DWQ (*General Statewide Waste Discharge Requirements for Sewage Collection Agencies*). Reports on sewage spills are available on a real-time basis to the public from the State Water Board's webpage at:

<https://ciwqs.waterboards.ca.gov/>

Public Spills: From September 1 to September 30, 2010, there were 14 SSOs from public systems in the San Diego Region as reported in the on-line State Water Board CIWQS database. These SSOs included 3 spills of 1,000 gallons or more, and 6 spills reaching surface waters,

including storm drains. The combined total volume of reported sewage spilled from all publicly-owned collection systems for the month of September 2010 was 19,331 gallons.

From October 1 to October 31, 2010, there were 13 SSOs from public systems in the San Diego Region as reported in the on-line State Water Board's CIWQS database. These SSOs included 4 spills of 1,000 gallons or more, and 6 spills that reached surface waters, including storm drains. The combined total volume of sewage spills, reported from all publicly-owned collection systems for the month of October 2010, was 330,379 gallons. A majority of the volume of sewage spilled in October 2010 was a result of two major spills. 252,000 gallons of sewage were discharged to Encinas Creek from the Encina Wastewater Authority in Carlsbad, and 69,780 gallons was discharged to Batiquitos Lagoon from a Leucadia Wastewater District pump station failure.

In accordance with the State Water Board's Water Quality Enforcement Policy, each of the two major spills are currently under investigation for enforcement prioritization by our Compliance Oversight Group. Investigative Order No. R9-2010-0142 was issued to the Encina Wastewater Authority and each of its member agencies on October 18, 2010 for the discharge of untreated sewage from the Encina Water Pollution Control Facility. The Encina report was submitted on December 6, 2010. The Leucadia Wastewater District voluntarily submitted a comprehensive spill report on November 17, 2010. Both reports are currently under review.

Reported Private Spills: Twenty six discharges of untreated sewage from private laterals were reported, during September and October 2010, by the collection agencies on-line, pursuant to San Diego Water Board Order No. R9-2007-0005 (*Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region*). These private lateral spills included 1 spill of 1,000 gallons or more and 9 spills that reached surface waters, including storm drains. The combined total volume of reported sewage discharges, from private lateral systems for the months of September and October 2010 was 4,592 gallons.

A total of 0.03 and 2.18 inches of rainfall were recorded at San Diego's Lindbergh Field for September and October 2010, respectively. For comparison, during September and October 2009, 9 and 13 public SSOs were reported during a period of time when trace amounts of rainfall were recorded at Lindbergh Field. A total of 35 private lateral sewage discharges were reported during September and October 2009.

Attached are three tables titled:

- "September 2010 - Summary of Public Sanitary Sewer Overflows in Region 9"
- "October 2010 - Summary of Public Sanitary Sewer Overflows in Region 9"
- "Sep - Oct 2010 - Summary of Private Lateral Sewage Discharges in Region 9"

Additional information about the San Diego Water Board SSO regulatory program is available at: <http://www.waterboards.ca.gov/sandiego/programs/sso.html>.

2. Enforcement Actions for November 2010

Staff Contact: Jeremy Haas

During the month of November 2010, the San Diego Water Board initiated the following enforcement actions:

November 2010 Enforcement Actions	Number
Administrative Civil Liability Order	1
Administrative Civil Liability Complaint	2
Administrative Civil Liability Withdrawal	1
Notice of Violation, with Water Code Section 13267 Reporting Requirement	1
Notice of Violation	1
Notices of Noncompliance with Storm Water Enforcement Act	8
Staff Enforcement Letters	10
<i>Total</i>	<i>24</i>

A summary of recent regional enforcement actions is provided below. Additional information on violations, enforcement actions, and mandatory minimum penalties is available to the public from the following on-line sources:

State Water Board Office of Enforcement webpage at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/

California Integrated Water Quality System (CIWQS)

http://www.waterboards.ca.gov/water_issues/programs/ciwqs/publicreports.shtml

State Water Board GeoTracker database:

<https://geotracker.waterboards.ca.gov/>

Administrative Civil Liability (ACL) Orders

City of Escondido, Hale Avenue Resource Recovery Facility

ACL Order No. R9-2010-0144 against the City of Escondido was adopted on November 10, 2010 and imposed a \$6,000 mandatory minimum penalty as recommended in ACL Complaint No. R9-2010-0132 for two violations of numeric effluent limitations in Order No. R9-2005-0139 *Hale Avenue Resource Recovery Facility Brine Discharge*.

ACL Complaints

Healthy Times, Inc., Poway

ACL Complaint No. R9-2010-0126 was issued to Healthy Times, Inc. on November 17, 2010 for \$9,462 for violations of the general industrial storm water permit, Order No. 97-03-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 Waste Discharge Requirements (WDRs) for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities*. The Complaint proposes \$2,900 in mandatory penalties pursuant to Water Code section 13399.33 for failing to submit the fiscal year (FY) 2007-2008 and 2008-2009 annual reports and discretionary penalties of \$6,592 for failing to pay the FY 2007-2008, 2009-2010, and 2009-2010 annual fees. A hearing is tentatively scheduled for February 9, 2011.

Jack Eitzen, 38155 Via Vista Grande, Murrieta

ACL Complaint No. R9-2010-0104 was issued against Jack Eitzen on November 15, 2010 for \$301,950 for alleged violations of Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activities*. Administrative assessment of civil liability is proposed for failing to develop and implement an adequate Storm Water Pollution Prevention Plan at 38155 Via Vista Grande, Murrieta for 211 days. A hearing is tentatively scheduled to be held at the San Diego Water Board meeting on February 9, 2011.

Bulldog Concrete Pumping, San Diego

ACL Complaint No. R9-2010-0082 against Bulldog Concrete Pumping was withdrawn on November 2, 2010. The ACL Complaint was issued on September 22, 2010 for failure to comply with the directives of Cleanup and Abatement Order R9-2008-0036; specifically the failure to cleanup and abate the effects of concrete discharged into Chollas Creek in 2004. On October 18, 2010, the Dischargers notified the Prosecution Team that they had recently removed the concrete in response to receiving the ACL Complaint. San Diego Water Board staff Frank Melbourn and Christina Arias verified the concrete had been removed during an inspection on October 20, 2010. On October 26, 2010, the Discharger provided documentation that the concrete was properly disposed. Given the previous criminal prosecution of this matter to act as a deterrent and the importance the San Diego Water Board places on cleanup, both present here, the Prosecution Team elected to not pursue additional penalties. Therefore, the Complaint was withdrawn without prejudice.

Notice of Violation with Water Code Section 13267 Technical Report

Scripps Mesa Developers, LLC, San Diego

NOV No. R9-2010-0146 was issued on November 3, 2010 to Scripps Mesa Developers, LLC for violations of Order No. 2009-009-DWQ, *NPDES No. CAS000002, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*. The cited violations include failure to comply with discharge prohibitions, failure to adequately implement erosion control Best Management

Practices (BMPs), and failure to adequately implement sediment control BMPs. On October 25, 2010, San Diego Water Board inspectors observed sediment-laden water being pumped from the construction site into an offsite storm drain and found that the entire site lacked adequate erosion control BMPs including several slopes susceptible to discharge. Pursuant to Water Code section 13267 Scripps Mesa Developers, LLC was required to submit a technical report by November 22, 2010 that describes remedies to the identified deficiencies and other information regarding implementation of construction storm water BMP requirements of Order No. Order No. 2009-009-DWQ.

Notice of Violation (NOV)

Palomar Village Shell, Temecula

NOV No. R9-2010-0149 was issued to Palomar Village Shell on November 16, 2010 for failing to submit a Site Assessment Report by October 30, 2010 as required in Investigative Order No. R9-2010-0064.

Notices of Noncompliance with Storm Water Enforcement Act of 1998

Notice of Requirement to Enroll Under Industrial Storm Water General Permit

Notices of Noncompliance were sent on November 5, 2010 to eight facilities (see table below) for failure to enroll in the statewide General Industrial Storm Water Permit Order No. 97-03-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 Waste Discharge Requirements (WDRs) for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities*. The Notices are the first to inform the dischargers that, pursuant to Water Code section 13399.30(a)(2), failure to enroll will subject them to mandatory penalties. A second Notice will be sent after 30 days to any of the dischargers that fail to enroll. If a Notice of Intent to enroll is not submitted within 30 days of the second Notice, the violation will be subject to a mandatory penalty of not less than \$5,000 per year of noncompliance plus staff costs pursuant to Water Code section 13399.33.

Facility Name	Address	City
American Recycling	4070 Home Ave.	San Diego
California Commercial Asphalt, LLC	9229 Harris Plant Rd.	San Diego
Coleman American	10015 Waples Court	San Diego
Pacific Insulation Company	4550 Federal Blvd.	San Diego
Rainbow Vending, Inc.	5515 Market St.	San Diego
Riley Recycling	2812 Commercial St.	San Diego
San Diego County Truss	7462 Mission Gorge Rd.	San Diego
Seaman Poe Monument	3893 Imperial Ave.	San Diego

Staff Enforcement Letters (SEL)Carlsbad Municipal Water District, Carlsbad Recycling Facility

An SEL was issued to the Carlsbad Municipal Water District on November 8, 2010 for three violations at the Carlsbad Water Recycling Facility of the daily maximum manganese discharge specification in Order No. 2001-0352 that occurred between July and September 2010.

Fairbanks Ranch Community Services District, Water Pollution Control Facility

An SEL was issued to the Fairbanks Ranch Community Services District on November 4, 2010 for one violation at its Water Pollution Control Facility of the 30-day average total dissolved solids (TDS) discharge specification in Order No. 93-05 that occurred in April 2010.

Ramona Municipal Water District, San Vicente Wastewater Treatment Plant

An SEL was issued to the Ramona Municipal Water District on November 3, 2010 for one violation at the San Vicente Wastewater Treatment Plant of the 12-month average percent sodium discharge specification in Order No. 2009-0005 that occurred in June 2010.

Ramona Municipal Water District, San Vicente Wastewater Treatment Plant

An SEL was issued to the Ramona Municipal Water District on November 8, 2010 for one violation at the San Vicente Wastewater Treatment Plant of the 12-month average percent sodium discharge specification in Order No. 2009-0005 that occurred in July 2010.

City of San Diego, North City Water Reclamation Plant

An SEL was issued to the City of San Diego on November 9, 2010 for one violation at the North City Water Reclamation Plant of the 12-month average manganese discharge specification in Order No. 97-03 that occurred in September 2010.

County of San Diego, Pine Valley Sanitation District

An SEL was issued to the County of San Diego, Pine Valley Sanitation District on November 2, 2010 for one violation of the 12-month average TDS discharge specification in Order No. 94-161 that occurred between October 2009 and September 2010.

County of San Diego, Rancho del Campo Water Pollution Control Facility

An SEL was issued to the County of San Diego on November 2, 2010 for one violation at the Rancho del Campo Water Pollution Control Facility of the 12-month average nitrate discharge specification in Order No. 87-108 that occurred between October 2009 and September 2010.

South Orange County Wastewater Authority, Multiple Facilities

An SEL was issued to the South Orange County Wastewater Authority on November 9, 2010 for numerous violations of Order No. 97-52 (*Waste Discharge and Water Recycling Requirements for the Production and Purveyance of Recycled Water by Member Agencies of the South Orange County Reclamation Authority, Orange County*) at two of its member agencies' facilities that occurred between July 2010 and September 2010.

The Moulten Niguel Water District Regional Plant was cited for two violations of the 12-month average discharge specifications for manganese.

The South Coast Water District Coastal Treatment Plant was cited for one violation of the daily maximum discharge specification for manganese and two violations of the 12-month average discharge specification for manganese.

Whispering Palms Community Services District, Water Pollution Control Facility

An SEL was issued to the Whispering Palms Community Services District on November 4, 2010 for three violations of Order No. 94-80 at its Water Pollution Control Facility. The SEL cited one violation of the 30-day average TDS discharge specification that occurred in May 2010, one violation of the 30-day average chloride discharge specification that occurred in May 2010, and one violation for late submission of groundwater analyses.

San Elijo Joint Powers Authority, San Elijo Reclamation Facility

An SEL was issued to the San Elijo Joint Powers Authority on November 23, 2010 for one violation at the San Elijo Reclamation Facility of the 12-month average TDS discharge specification in Order No. R9-2000-0010 that occurred between October 2009 and September 2010.

3. New Waste Discharge Requirement Fee Schedule

Staff Contact: Jeremy Haas

On October 19, 2010 the State Water Board adopted Resolution No. 2010-0051, which established fee schedules for Fiscal Year (FY) 2010-11. The only significant change from the FY 2009-10 fee schedule is that annual fees will be assessed for open landfills.

The new fee for open landfills is expected to generate about \$2.1 million statewide. The State Water Board also anticipates approximately \$7.2 million in one-time expenditure reductions attributable to the negotiated salary savings (including the workforce cap, the Personal Leave Program, and three months of furloughs) approved in the FY 2010-11 State Budget Act. As a result of the anticipated salary savings, no additional fee increases were necessary to meet Budget Act revenue levels.

Water Code Section 13260 requires each person who discharges waste or proposes to discharge waste that could affect the quality of the waters of the state to file a report of waste discharge with the appropriate regional water board and to pay an annual fee set by the State Water Board. Those are deposited in the Waste Discharge Permit Fund. Water Code Section 13260 also requires the State Water Board to adopt, by emergency regulations, an annual schedule of fees for persons discharging waste to the waters of the state. Water Code Section 13260 further requires the State Water Board to adjust the annual fees each fiscal year to conform to the revenue levels set forth in the Budget Act.

Information on fees is available at <http://www.waterboards.ca.gov/resources/fees/>

4. Status of Box Canyon Landfill Solar Panel Project (Attachment B-4)

Staff Contact: Kelly Dorsey

The Naval Facilities Engineering Command (Navy) and Marine Corps Base Camp Pendleton (Base) have constructed the first phase of the solar power generation system at the Box Canyon Landfill. All of the photovoltaic (PV) solar panels have been installed and the system is expected to be operational in December 2010. The system is built on top of the cover of the inactive Box Canyon Landfill. The Executive Officer of the San Diego Water Board approved the plan in August 2010 after the Navy demonstrated that the integrity of the landfill cover would not be compromised by the construction and operation of the system.

The PV solar power generation system is comprised of approximately 6,300 PV solar panels that cover approximately six acres of the landfill and will generate 1.48 megawatts of direct current energy. The PV solar panels will provide renewable electrical power to Camp Pendleton's electric distribution system that serves the southern part of the Base. The Navy recently informed the San Diego Water Board that it intends to submit a plan to approximately double the number of PV solar panels at Box Canyon Landfill in 2011. The plan will be provided to the San Diego Water Board in an Explanation of Significant Difference for review and approval by the Executive Officer.

During a site visit on November 9, Ms. Kelly Dorsey and Ms. Cheryl Prowell of the Cleanup and Land Discharge Branch observed the recently constructed first phase of PV solar panels. Photographs of the PV panels are provided in attachment B-4.

Additional information is provided in the Executive Officer Report for August 11, 2010 http://www.waterboards.ca.gov/sandiego/publications_forms/publications/.

5. Expedited Payment Letters to Resolve Mandatory Minimum Penalty Violations (Attachment B-5)

Staff Contact: Catherine Hagan and Jeremy Haas

Introduction

Orders imposing administrative civil liability (ACL) are issued by the regional water boards pursuant to their authority in Water Code section 13323 to assess discretionary liability through Water Code sections 13350 or 13385 (and others) or to assess mandatory minimum penalties (MMPs) under Water Code sections 13385 or 13399.33. In 2008, the State Water Resources Control Board's (State Water Board) Office of Enforcement developed expedited payment procedures to implement the MMP initiative for penalties that the Director of the Office of Enforcement would be prosecuting. The process has worked well to alleviate an extensive backlog of outstanding violations subject to MMPs in some regions. For dischargers who are willing to waive their right to a hearing and pay the full liability, the expedited payment process is a useful tool to avoid the time and expense otherwise involved in developing and serving a complaint and holding a hearing prior to issuance of an ACL Order. A similar process may be

considered by the San Diego Regional Water Quality Control Board (San Diego Water Board) to achieve efficiencies in imposing MMPs on dischargers within the San Diego Region.

Administrative Civil Liability Process

Water Code section 13323 sets forth the process the regional water boards use to issue complaints and assess administrative civil liability (ACL), including MMPs. The discharger issued the complaint has a right to have a hearing before the regional water board to contest the complaint. Alternatively, the discharger may waive the right to a hearing and pay the amount alleged in the ACL complaint. (Wat. Code § 13223, subd. (b).) The State Water Board is also authorized to issue complaints and hold hearings before the State Water Board to impose administrative civil liability. (Wat. Code § 13323, subd. (c).)

The California Administrative Procedures Act authorizes the regional water boards to settle adjudicative matters without a hearing and provides that the authority to approve a settlement may be delegated. (See Gov. Code § 11415.60.) Historically, however, the resolution of ACL complaints by the San Diego Water Board has occurred in one of three ways: (1) if the discharger contested the complaint, the San Diego Water Board held an adjudicatory hearing and issued an ACL Order following the hearing; and (2) if the discharger did not contest the complaint, the San Diego Water Board issued an ACL Order without a hearing; and (3) if the discharger planned to contest the complaint but the staff and the discharger arrive at a negotiated settlement, including a waiver of the right to a hearing, the San Diego Water Board issued an ACL Order approving the settlement agreement at a board meeting but without a hearing.

Despite the San Diego Water Board's historical practice, if a discharger waives the right to a hearing and agrees to pay the liability in full, neither an ACL complaint nor an ACL order is legally required to be issued. In many instances, an expedited payment process can avoid the need to prepare a complaint and ACL Order for San Diego Water Board consideration.

Overview of Mandatory Minimum Penalties

Administrative civil liability includes discretionary and mandatory penalties under the Water Code. MMP provisions are required by section 13385, subdivisions (h) and (i) of the Water Code. MMPs are issued for a subset of violations of the Federal Water Pollution Control Act (Clean Water Act). For violations that are subject to MMPs, the regional water boards must assess an ACL for the mandatory minimum amount set forth in the Water Code or for a greater amount using discretionary liability. Section 13385, subdivision (h) requires that an MMP of \$3,000 be assessed by the regional water boards for each serious violation (a defined term under the Water Code). Water Code section 13385, subdivision (i) requires that an MMP of \$3,000 be assessed by the regional water boards for each non-serious violation if the discharger does any of certain prescribed actions or inactions four or more times in any period of 180 days (e.g., fails to file or files an incomplete report of waste discharge pursuant to Water Code section 13260 or violates a waste discharge requirement effluent limitation.)

In addition, Water Code section 13399.33 requires, with respect to industrial storm water discharges, that the regional water boards impose MMPs for failure to submit a required annual report or fail to obtain coverage under an appropriate storm water NPDES permit (e.g., under the State Water Board's General Industrial Storm Water Permit (Order No. 97-03-DWQ)). For instance, Water Code section 13399.33, subdivisions (c) and (d) require that a person who fails

to submit the required annual report pay a minimum penalty of \$1,000 as well as staff costs incurred by a regional water board to pursue the minimum penalty. Upon a violation of the obligation to file an annual report, a regional water board is required to send two notices to the discharger, separated by a specific period of time, and then required to impose civil liability administratively. Traditionally, the San Diego Water Board would issue a complaint and schedule a hearing at which the board may take action to impose liability for failure to file the report through adoption of an ACL Order. Therefore, significant staff and board resources may be involved in imposing a penalty for failure to submit the required report for even a single year. If the discharger waives its right to a hearing and is willing to pay the appropriate liability, it may be appropriate to consider an expedited payment process, similar to that developed by the Office of Enforcement, to achieve efficiencies in resolving MMP violations.

Expedited Payment Process Developed by Office of Enforcement

The San Diego Water Board may consider using an expedited payment process similar to the one developed by the Office of Enforcement to resolve violations subject to MMPs. The pre-complaint process would include issuance of an expedited payment letter to dischargers identified as having one or more violations subject to mandatory minimum penalties. The letter places the discharger on notice of the alleged violations and the applicable statutory provisions in the Water Code. The letter would include an offer to participate in the expedited payment program to avoid formal enforcement by the San Diego Water Board and would explain the process for accepting the offer and for contesting certain identified violations. The process developed by the Office of Enforcement includes providing the discharger with a waiver titled "Acceptance of Conditional Resolution and Waiver of Right to Hearing." After consideration of any response by the discharger, if the discharger accepts the offer and sends a signed waiver, resolution of the violations would be publicly noticed for a 30 day comment period to comply with federal regulations regarding settlement of Clean Water Act violations. The San Diego Water Board would consider the waiver and agreement to pay effective upon expiration of the 30 day comment period and the State Water Board would begin the invoicing process at that time.

An example of a recent Expedited Payment Letter issued by the Office of Enforcement for alleged violations in Region 4 is attached.

6. Status Report on Sediment Complaint at Artesian Road

Staff Contact: Frank Melbourn

During the November 10, 2010, San Diego Water Board Meeting Public Forum, Mr. Randall Salatino requested that a Cleanup and Abatement Order be issued to Crosby Home Owners' Association (HOA) to remove sediment from an unnamed tributary to Lusardi Creek that flows through his residential property. San Diego Water Board staff investigated the complaint, and after thoughtful review and consideration recommend that no action be taken.

No action is recommended because the site's water quality is minimally impacted to a point where it is not a priority for the San Diego Water Board to consider taking formal enforcement. Furthermore, the following considerations also support a recommendation of no action: There are multiple sediment sources such that it is difficult to conclude that Crosby HOA was the sole

or even a significant sediment contributor; Leaving the sediment in place to be naturally attenuated is the most favorable environmental solution; and finally, Mr. Salatino has other remedies available such as a civil action against Crosby HOA for nuisance and trespass.

Investigation

On November 30, 2010, Assistant Executive Officer James Smith, Christina Arias, and Frank Melbourn inspected the unnamed tributary and met with Mr. Salatino. The San Diego Water Board previously inspected the site on April 5, 2010, after receiving a complaint from Mr. Salatino on March 15, 2010, that his property was inundated with sediment from the Crosby Estate. The April 5, 2010, inspection found the following: during mid-January 2010 the area received six inches of rain over six days; a storm drain on Bing Crosby Boulevard became plugged during the storm event and caused storm water to top the street curb and flow uncontrolled down a 40-foot vegetated slope; the runoff caused a 15-foot wide section of the slope to fail and released sediment into the unnamed tributary; and the slope failure was filled and protected with erosion control blankets by the time of the inspection. Strikingly however, staff could not conclude that the sediment discharged onto Mr. Salatino's property was that discharged by the Crosby HOA. Furthermore, staff noted several installations of culverts, fences, and earthwork within the unnamed tributary for which they could not locate federal Clean Water Act section 401 Water Quality Certifications. Unfortunately, this is a frequent occurrence in formerly rural areas of our region that are now becoming suburban.

Multiple Sediment Sources

While the sediment discharged into the unnamed tributary from the Crosby HOA hillside could be documented, there are other potential sources of sediment that can also be observed. San Diego Water Board inspections found dirt roads and staging areas owned by the San Diego County Water Authority, individual residential construction sites without Best Management Practices (BMPs), and fruit groves without vegetative cover that can contribute sediment. Of these three the greatest threat to water quality likely comes from the San Diego County Water Authority's dirt access roads. It is estimated that there are hundreds of miles of access roads crisscrossing some of the more valuable habitat in the region. To this end, staff has initiated contact with the San Diego County Water Authority to explore ways to reduce sediment exposure.

The creation of the Crosby HOA, while in accordance with the regulations of the time, appears to have drastically altered the hydrology in that area. Long-time residents estimate ground elevations to have been raised 50 to 60 feet for the HOA. Additional estate homes, concrete drainage ditches, and roads all contributed to increase the amount of impervious surface that altered the previously-stable sediment condition. Evidence of erosive downcutting of stream banks is evident from immediately downstream of the HOA to just past the Salatino residence. Vertical drops up to approximately ten feet exist and serve as evidence of increased flow that displaced sediment within the reaches. It is difficult to determine the ultimate fate of that sediment from that of the March 2010 slope failure. Absent a global effort to address all of the sediment sources in the watershed, it is likely that more sediment will continue to be deposited in the waterway and conceivable that Mr. Salatino would be reappear before the San Diego Water Board every few years to request that his property be cleaned.

Natural Attenuation

The least environmentally harmful solution to the sediment on Mr. Salatino's property is natural attenuation (i.e., to leave it in place). Over time the sediment will be flushed downstream. Removing the sediment from the unnamed tributary would require obtaining a Clean Water Act section 401 Water Quality Certification from the San Diego Water Board. It is unlikely, however, that the San Diego Water Board would issue a certification for large-scale sediment removal because doing so would cause more environmental harm than good. The San Diego Water Board may consider sediment removal with hand tools as a less environmentally harmful alternative that may not be subject to 401 certification.

Enforcement Priorities for Discretionary Enforcement Actions

It is the policy of the State Water Board that every violation results in the appropriate enforcement response consistent with the priority of the violation and the record of the responsible party established in accordance with the Water Quality Enforcement Policy. Pursuant to the Policy the San Diego Water Board prioritizes cases for formal discretionary enforcement action to ensure the most efficient and effective use of available resources. The Policy directs the San Diego Water Board to rank violations as "Class I Priority Violations" (highest priority), "Class II Violations," or "Class III Violations" (lowest priority). The discharge of sediment from a hillside of the Crosby Estate was ranked as a "Class III Violation" because it fit under the category of "unauthorized discharges that pose a low threat to water quality." If the San Diego Water Board conducts further investigation into this matter to support a formal enforcement action, then higher priority enforcement cases will not be completed or will be delayed. Examples of Class I Violations currently being pursued by the San Diego Water Board and pending for Board consideration include Complaints for Administrative Civil Liability against the Eastern Municipal Water District for spilling 1.6 million gallons of sewage, and against Mr. Jack Eitzen for the unpermitted filling of several waters of the State and for failing to have appropriate construction best management practices.

Civil Remedies

Finally, Mr. Salatino can seek the assistance of an attorney to assert a civil cause of action against the Crosby HOA for trespass and nuisance. For instance in 2005, Mr. Salatino reached a pre-trial settlement with the developers of the Crosby Estate to cleanup sediment discharged to his property during construction of the residential development. Therefore, if the San Diego Water Board elects to take no further action, Mr. Salatino will still have other remedies available.

Investigative Order

If the San Diego Water Board directs staff to investigate the issuance of formal enforcement (i.e., Cleanup and Abatement Order), then staff will prepare an Investigative Order for the Crosby HOA to determine the amount of the sediment discharge and to other property owners along the unnamed tributary, including San Diego County Water Authority and Mr. Salatino, to determine their compliance with the federal Clean Water Act (i.e., Section 401 Water Quality Certifications) for installation of culverts, fencing, and earthwork in the unnamed tributary. Based upon the responses to the Investigative Order, Cleanup and Abatement Orders and Administrative Civil Liability Complaints or other actions may be issued to the appropriate parties. Issuance and tracking of an Investigative Order and subsequent enforcement actions is

estimated to require 80 to 100 hours of staff time. This diversion of resources will delay or prevent the enforcement of high priority Class I Violations. Notably, if staff had pursued formal enforcement initially, the adoption of the San Diego Hydromodification Management Plan (designed to lessen the impacts of increased impervious surface throughout the San Diego County portion of the region) would have been delayed, allowing further development to alter stream and sediment dynamics in a manner similar to the situation at Artesian Road.

7. Wetland and Riparian Area Protection Policy Update

Staff Contact: Chiara Clemente

On November 4, 2010, Chiara Clemente and Chad Loflen attended a workshop hosted by the State Water Board in Sacramento, aimed at developing Phase I of the State's Wetland and Riparian Area Protection Policy (WRAPP). As directed by the State Water Board in October 2009, development of the WRAPP will be implemented in 3 phases, with the first phase planned for adoption in November 2011. The purpose of the policy is to "reverse historic trends in wetland loss, mitigate future risks to aquatic resources, and produce measureable improvement in abundance, diversity and health of the State's wetland and riparian resource."

Phase I of the policy intends to establish a consistent regulatory framework for the processing and review of state water quality certifications required under Clean Water Act (CWA) Section 401 and related provisions of the California Water Code. This includes establishment of a wetland definition, a delineation methodology, a wetland assessment framework, and regulations pertaining to the discharge of dredged or fill material. The wetland definition recommended by the State Water Board's Technical Advisory Team is as follows:

An area is wetland if, under normal circumstances, it (1) is saturated by ground water or inundated by shallow surface water for a duration sufficient to cause anaerobic conditions within the upper substrate; (2) exhibits hydric substrate conditions indicative of such hydrology; and (3) either lacks vegetation or the vegetation is dominated by hydrophytes.

The State Water Board also intends to adopt a delineation methodology that aligns itself with the Federal Clean Water Act (CWA) Section 404(b)(1) process, and the U. S. Army Corps of Engineers' delineation manuals, as applicable.

The State of California, through the California Wetland Monitoring Workgroup, is also placing considerable effort in developing a State-wide wetland monitoring and assessment framework for information-gathering, management, interpretation, and reporting of aquatic resources, to assist resource agencies, and the public, in making more informed wetland management decisions. The framework consists of three levels of information, ranging from broad to specific, each having a particular use in regulatory decision making and management. The tools include 1) the California Rapid Assessment Method (CRAM) for routine assessment of wetland and riparian conditions, 2) Wetland Tracker, an online geospatial data management system consisting of data and maps collected for projects impacting wetland and riparian resources, and 3) an online 401 application form that captures and stores project data in Wetland Tracker. The San Diego Water Board has been requiring GIS coordinates for impact and mitigation areas as part of

its certification conditions, and has also required CRAM assessments, as well as other monitoring data, for impacts to perennial streams. Staff will be working with SCCWRP to upload this information into Wetland Tracker to develop a more robust baseline assessment of CRAM and Wetland Tracker.

Wetland Tracker can be viewed at <http://www.californiawetlands.net/tracker/>.

More information on the WRAPP development is available at http://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.shtml.

8. Status Report – Shipyard Sediment Site Cleanup and Abatement Order and Environmental Impact Report

Staff Contact: Julie Chan

The Cleanup Team's work in November was divided among a number of different shipyard related tasks. Drafting the Clean Water Act Section 401 Certification for BAE System's proposed maintenance dredging project at the site was the most time consuming because of the complexity of the project, the number of stakeholders involved, and the aggressive schedule proposed by BAE Systems for the dredging. Contracting issues between the Responsible Parties and consultants created an additional workload for the Cleanup Team, and also caused delays in the Environmental Impact Report (EIR) preparation. The Cleanup Team met all the November deadlines imposed by the Presiding Officer's October 27, 2010 Order, which required producing documents for the San Diego Unified Port District (Port District) and Star & Crescent Boat Company (Star & Crescent), and producing and distributing the supplement to the electronic administrative record for the tentative Cleanup and Abatement Order. Progress on specific tasks is discussed in detail below.

Environmental Impact Report

The San Diego Water Board lacks the statutory or regulatory authority to order the Responsible Parties to pay for the EIR. NASSCO, BAE Systems, the City of San Diego, and SDG&E, however, have all agreed to pay into a trust that will fund the consultants' work on the EIR. It is expected that Campbell Industries will also make a contribution to the EIR fund. The Port District and the United States Navy have refused the Cleanup Team's requests to participate in funding the EIR. Progress was made on funding and contracting the EIR work in September and October, but outstanding contracting issues between the Responsible Parties funding the EIR and the EIR consultants (LSA Associates and Geosyntec) delayed work on the EIR during the month of November.

On November 30, 2010, in the absence of a signed contract between the Responsible Parties and the EIR consultants, the Executive Officer contacted the Deputy Director of the State Water Board's Division of Financial Assistance and asked that the San Diego Water Board's request for Cleanup and Abatement Account funds for preparation of the EIR be put on the State Water Board's meeting agenda. The Executive Officer also directed the Cleanup Team to resume drafting the Project Alternatives and Alternatives Analysis for the EIR to help compensate for

the delays due to the contracting issues. The Cleanup Team is continuing to mediate the resolution of the contract issues between the Responsible Parties funding the EIR and the consultants with the hope of getting the consultants back to work on the EIR by the week beginning December 6. The Cleanup Team will continue working on the EIR in coordination with LSA to draft sections of the EIR and respond to comments on the EIR in order to mitigate for the delays caused by the contracting issues. The Cleanup Team will also pursue the Clean Up and Abatement Account funds and initiate a separate contracting process to retain EIR consultant(s) in order to augment the San Diego Water Board staff commitment to the EIR, and to have a viable alternative to the preferred option of an EIR funded by willing Responsible Parties committed to the shipyards clean up.

BAE Systems Maintenance Dredging Project

The Cleanup Team completed the draft Clean Water Act Section 401 Certification for maintenance dredging for one of BAE Systems' dry docks, and circulated the draft certification documents to stakeholders for review. This dredging is necessary for BAE Systems to lower its dry dock to berth and position ships on the keel blocks for hull maintenance and repair. About one third of the maintenance dredging footprint, however, overlaps the Shipyard Sediment Site cleanup footprint creating concerns about the project for both environmental groups and the Shipyard Sediment Site Responsible Parties. BAE Systems proposed a very aggressive schedule for the project in order to complete the dredging by February 2, 2011 when a Navy ship will be in BAE Systems shipyards for repairs.

In November, the Cleanup Team participated in several meetings with stakeholders regarding BAE Systems' maintenance dredging project. Before the Executive Officer can issue the 401 certification, additional outreach to the stakeholders is needed. The Cleanup Team forwarded all relevant documents on this project to the Shipyard Sediment Site Responsible Parties, including Coastkeeper's comment letter, and the Port District's Project Review and Approval, and CEQA and Coastal Determination on December 1, and requested comments by December 6. The Cleanup Team and 401 staff also made themselves available to the stakeholders for a face-to-face meeting on December 7 should the stakeholders wish to take advantage of a further opportunity to discuss the proposed dredging project.

Revised Tentative Clean Up and Abatement Order and Draft Technical Report

The Cleanup Team completed the supplement to the electronic shipyard administrative record for the tentative CAO (supplement). The supplement contains documents and records obtained by the San Diego Water Board since 2008 that are needed to support the tentative CAO, as well as some pertinent pre-2008 documents on SDG&E's Silver Gate Power Plant NPDES permit, and the Port District's storm water permit. The supplement to the record was made available to the designated parties and the public on November 5, 2010 along with an underline/strikeout version of the Draft Technical Report as ordered by Presiding Officer Destache in his October 27, 2010 Order. There are three ways to get a copy of the supplement.

1. Contact Vicente Rodriguez by e-mail to request a disc copy of the supplement at vrodriquez@waterboards.ca.gov .
2. Access the supplement files and download them from the San Diego Water Board FTP site at:
<ftp://swrcb2a.waterboards.ca.gov/pub/rwqcb9/ShipyardSedimentSiteProject/SupplementaISAR/>
3. Access the supplement in compressed, 100MB, zipped files for download from the San Diego Water Board website at: www.waterboards.ca.gov/sandiego

With the public release of the supplement, the underline/strikeout version of the Draft Technical Report, and the underline/strikeout version of the tentative CAO, and after having completed the document production to the Port District and Star & Crescent ordered by Presiding Officer Destache, the immediate task pending for the Cleanup Team with respect to the tentative CAO now is to respond to the Port District's and Star & Crescent's written discovery requests by January 5, 2011.

Discovery and Depositions

While Star & Crescent's discovery requests are focused and modest, the Port District's discovery requests are extensive, contain numerous subparts, and will require considerable staff time and effort between now and January 5 to respond to in a complete and thorough manner. The Port District's discovery requests, propounded on November 23, include 47 requests to produce documents, 24 requests for admissions, and 64 special interrogatories, one of which contains dozens of subparts. Star & Crescent's discovery requests, propounded on November 29, include 10 requests to produce documents and 30 special interrogatories. Responses to both discovery requests must be provided by the Cleanup Team by January 5, 2011. Depositions of the 5 key members of the Cleanup Team are expected to resume in January 2011, and it is anticipated that these depositions will take between ten and twelve full working days to complete, not counting preparation time. All depositions should be completed by early March.

Soil Sampling at the SDG&E Leasehold

The Port District has announced plans to conduct soil sampling and analyses in December 2010 to better characterize the nature and extent of PCB and other waste constituent contamination at SDG&E's leasehold. The leasehold is located along a portion of the northern shoreline of the Shipyard Sediment Site. Samples will be taken at multiple depths in the areas of the cooling water tunnels and former discharge ponds. The tentative CAO names SDG&E as a Responsible Party based on evidence of waste discharges from the former Silver Gate Power Plant which operated on the leasehold.

The Cleanup Team will continue reporting on the progress of the Shipyard Sediment Site cleanup efforts monthly in the Executive Officer's Report. Although time was lost this month as a result in the delays by the Responsible Parties in finalizing the contract with LSA, the Cleanup Team will coordinate with LSA and will itself draft sections of the EIR in order to expedite the public release of a draft EIR in early 2011. This will enable the Board to consider the Cleanup Order in late 2011.

9. Conditional Waiver No. 4, the "Ag Waiver"

Staff Contact: Pete Peuron

On October 10, 2007, the San Diego Water Board adopted Resolution No. R9-2007-0104, a resolution to amend the Basin Plan to incorporate 11 Conditional Waivers of Waste Discharge Requirements for Specific Types of Discharges within the San Diego Region. Conditional Waiver No. 4 (Ag Waiver) applies to waste discharges related to irrigated agriculture and nurseries. On November 4, 2008, the State Water Board adopted Resolution No. 2008-0081 which slightly amended Resolution No. R9-2007-0104 by eliminating certain conditions that pertained to the storage of compost. The current Ag Waiver (like all conditional waivers) expires after a period of 5 years (i.e., at the end of 2012). Therefore, a new Ag Waiver will be written for the 2013 to 2017.

Conditional waivers allow dischargers to enroll under a waiver instead of having to file a Report of Waste Discharge (RoWD) and obtain a permit (i.e., Waste Discharge Requirements). Pursuant to the Water Code, all dischargers of waste to waters of the State must obtain Waste Discharge Requirements (WDRs) unless they qualify for a conditional waiver of WDRs. Waivers are available for certain discharge categories that are considered to present a low risk to water quality when the conditions of the waiver are complied with. The Ag Waiver is one of eleven conditionally waived waste discharge categories in the San Diego Region. By enrolling in the waiver, dischargers certify that they are employing management practices to reduce pollutant loads to minimize or eliminate pollution associated with their operations. Conditional Waiver No. 4 requires growing operations that utilize irrigation to implement Best Management Practices (BMPs) to reduce or eliminate discharges of agricultural waste which typically include fertilizers, pesticides, salts (total dissolved solids, chlorides), and sediment. Other major requirements of the Ag Waiver include:

- Enrollment in the waiver by January 1, 2011
- Submittal of a plan to perform water quality monitoring by January 1, 2012.
- Submittal of a monitoring report by December 31, 2012.

To enroll, growers must submit a Notice of Intent. Any commercial growing operation that does not enroll is subject to enforcement action including monetary penalties and requirements to file a RoWD. Growers may enroll as members of a monitoring group. By enrolling in a monitoring group, the costs of preparing monitoring plans, conducting sampling, analyzing samples and preparing monitoring reports are shared among group members (which can number in the thousands) resulting in significant cost savings over enrollment as an individual.

While growers have the option to enroll either as an individual discharger or as a member of a monitoring group, all three monitoring groups in the San Diego Region have recently closed enrollment in order to have time to prepare databases with information about growers and maps that are required to be submitted along with each monitoring group's Notice of Intent. The monitoring groups will probably re-open enrollment in January to allow growers who failed to enroll by the deadline to join the monitoring groups. In early January of 2011 the San Diego Water Board will identify non-filers by comparing lists of growers provided with the enrollment applications to a list of all known growing operations in the Region. Non-filers will be referred

to the San Diego Water Board's Compliance Oversight Group for enforcement prioritization. An initial estimate of 1,000 to 2,000 non-filers for the Region has been surmised.

The Ag Waiver applies to "agricultural and nursery operations." A clear definition of the term "agricultural and nursery operations," however, is not included within the waiver. Therefore, questions have arisen with regard to who is required to enroll. Other agricultural waiver programs in California typically require agricultural operations that are involved in commercial production of agricultural commodities to enroll and do not require enrollment from non-commercial entities. Therefore, the definition of "agricultural and nursery operations" necessarily applies to commercial operations rather than, for example, residential or hobby vegetable gardens or fruit trees; which would be expected to generate a negligible amount of agricultural waste.

Currently, the San Diego Water Board is preparing a Basin Plan amendment to the Ag Waiver that provides a definition of a commercial growing operation. The definition is intended to make it clear that waiver conditions only apply to growers that operate businesses (or commercial operations) and furthermore, to define businesses that require enrollment as being an operation with an income that grosses at least \$1,000 per year. This is the definition used by the U.S. Department of Agriculture for a commercial growing operation. In addition, the annual gross income is low enough to ensure that polluters of any significance will not be exempted from the waiver. The total amount of acreage exempted from the waiver, which is based on the gross amount of less than \$1,000, can be expected to be very small in comparison to all of the commercial growing operations in the San Diego Region. It is anticipated that the Basin Plan amendment will appear on the February 2011 San Diego Water Board agenda.

10. Pilot Study on Pharmaceutical and Personal Care Products in the San Diego Region

Staff Contact: Lilian Busse and Rachel Errthum

The Surface Water Ambient Monitoring Program (SWAMP) of the San Diego Water Board recently funded a pilot study on Pharmaceutical and Personal Care Products (PPCPs) in the San Diego Region. Two monitoring questions will be addressed in this study: (1) What is the occurrence and extent of PPCPs in areas with discharge of treated wastewater, with septic tanks, with untreated human waste water, and at reference sites in the San Diego region?, and (2) Are PPCP levels causes for concern?

PPCPs are one of many Contaminants of Emerging Concern (CECs). CECs are a diverse group of relatively unmonitored and unregulated chemicals shown to occur at trace levels in wastewater discharges, ambient receiving waters, and drinking water supplies. Beside PPCPs, CECs include several thousand other commercial and industrial compounds.

PPCPs are substances for human use for personal health or cosmetic reasons, as well as to increase the growth or to improve the health of livestock. PPCPs can enter the aquatic environment both from point and non-point sources. PPCPs have recently emerged as environmental contaminants with the potential of adverse impacts on various organisms and on

human health. A variety of PPCPs for human use continually enter wastewater treatment plants via excretion with urine and feces, and through direct disposal. During the wastewater treatment process, the PCPPs can remain unchanged or undergo transformation before discharge into the environment.

Nationwide, numerous PPCPs and their metabolites have been detected in a variety of water samples, sediment samples, and biological samples. In southern California, several studies on PPCPs were conducted in specific areas, or on specific samples. One study showed that certain PPCPs were found in fish liver from samples taken near waste water outfalls in southern California. A second study found several PPCPs in raw and treated drinking water in San Diego County.

This pilot study is a first step in including PPCPs in ambient surface water monitoring in the San Diego region. Samples will be collected at: (1) two reference sites, (2) two sites close to the outfall of the Padre Dam Water Recycling Facility, (3) two sites within watersheds known to have high concentrations of septic systems, and (4) two sites within watersheds known to have high concentration of untreated human waste water. Monitoring will occur over a 12-month period in (1) early fall, before the first rain event, (2) in winter, during the wet season, and (3) spring after the wet season, and (4) in summer. The first samples for this project were taken at the beginning of November 2010.

Results from this study will provide evidence to determine whether PPCPs are of major concern in surface waters in the San Diego region. The PPCP report will be shared and communicated among diverse stakeholder groups. These results will provide valuable information to assist in developing management strategies for addressing PPCPs in the environment.

11. Marine Corps Air Station Miramar Shotgun Range Cleanup

Staff Contact: Beatrice Griffey

Mr. Donald Winter, the Secretary of the Navy, had recommended in 2008 that trap and skeet shooting at the civilian shotgun range at Marine Corps Air Station Miramar be temporarily suspended so the nature and extent of the discharges of shot pellets and clay pigeons in both range and overshoot area could be evaluated. Mr. Ray Mabus, the Secretary of the Navy, agreed with Mr. Winter's recommendation on October 14, 2010. Mr. Winter's recommendation was made after eight environmental investigations of the shotgun range and completion of a recent Site Inspection Report (SI Report). The SI Report concluded that historical activities within the 29 acre shotgun range and the 13 acre overshoot area have caused wastes to be discharged into soil at concentrations that pose a potential risk to human health and ecological receptors. Constituents of concern include metals and polycyclic aromatic hydrocarbons. The Department of the Navy (Navy) concluded in the SI Report that additional environmental investigation is warranted to assess the full nature and extent of the waste constituents at the shotgun range and within the overshoot area. The San Diego Water Board reviewed the SI Report and concurred with the Navy recommendation. To date, the San Diego Water Board is not aware of any surface or groundwater contamination caused by the range. The Navy anticipates that it will submit a work plan for further investigation to the San Diego Water Board within the next calendar year.

Since 1975, the shotgun range has been used as a gun club for both trap and skeet shooting. The San Diego Shotgun Sports Association (SDSSA), the current lease holder, is hoping to persuade the Navy to reverse its decision to permanently close the shotgun range. This story was recently published in the San Diego Union-Tribune <http://www.signonsandiego.com/news/2010/oct/15/marines-order-shotguns-silenced-forever-miramar-ci/>.

Part C – Statewide Issues of Importance to the San Diego Region

1. USEPA's Development of Draft Recommended Interim Preliminary Remediation Goals (PRGs) for Dioxin in Soil

Staff Contact: Charles Cheng

The United States Environmental Protection Agency (USEPA) has developed draft interim PRGs¹ (Interim PRGs) for dioxin-like compounds (Dioxin) in soil (http://www.epa.gov/superfund/policy/remedy/pdfs/Interim_Soil_Dioxin_PRG_Guidance_12-30-09.pdf). USEPA announced its intent and initiated a public comment period on January 7, 2010², and is in the process of finalizing the Interim PRGs. The finalized Interim PRGs are intended for use until USEPA issues its final Dioxin assessment.

The currently recommended PRGs are based on the Dioxin toxicity value adopted by USEPA in 1985, which recommends soil Dioxin concentrations not to exceed 1 ppb toxicity equivalents (TEQs) in residential areas and a range of 5 ppb to 20 ppb TEQs in commercial/industrial areas. The proposed Interim PRGs reduce those concentrations to 0.072 ppb TEQ in residential areas and 0.95 ppb TEQ in commercial/industrial areas.

PRGs are calculated values based on cancer and non-cancer effects; they are not intended to act as site-specific cleanup levels; rather they are intended to serve as initial guidelines for use in scoping characterization and remediation alternatives at Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, a.k.a. Superfund) sites, Federal Facilities, and Resource Conservation and Recovery Act (RCRA) sites. Once the interim PRGs

¹ Preliminary remediation goals (PRGs) are chemical-specific concentration goals for specific media (e.g. soil, sediment, water and air) and land use combinations at Superfund, Federal Facilities and RCRA sites. They serve as a target to use during the initial development, analysis, and selection of cleanup alternatives and should both be protective of human health and the environment.

² Federal Register Vol. 75, No. 4 (dated January 7, 2010): <http://www.gpo.gov/fdsys/pkg/FR-2010-01-07/html/2010-16.htm>.

are finalized, USEPA plans to re-evaluate residual Dioxin levels at CERCLA sites where Dioxin contamination has previously been evaluated, particularly if environmental samples were previously analyzed using methods with a detection limit greater than the Interim PRGs. USEPA will also work with states to plan the re-evaluation of RCRA sites. Additional information on the Interim PRGs is available at:
<http://epa.gov/superfund/health/contaminants/dioxin/dioxinsoil.html>

2. Summaries of State Legislation from the 2009-2010 Session Affecting the State and Regional Water Boards

Staff Contact: Julie Chan

Summaries of legislation from the 2009-2010 session affecting the State and Regional Water Boards are available from the State Water Board office of Legislative Affairs. The summaries can be accessed at the link below:

http://www.waterboards.ca.gov/publications_forms/publications/legislative/summaries.shtml

The summaries cover all bills introduced during the session and indicate whether the bills were chaptered into law, vetoed by the Governor, or died in committee. Some of the important bills that were chaptered into laws that affect the San Diego Region are highlighted below.

SB 167(Ducheny) Solid waste: waste tires. This bill requires the California Integrated Waste Management Board (now CalRecycle) to include in its 5-year waste tire management plan the development of projects in Mexico that address the movement of used tires from California to Mexico that are eventually discharged into California watersheds. Waste tires are a significant portion of the trash load to the Tijuana River, and can be a significant source of zinc pollution to the environment. The San Diego Water Board is developing trash and sediment TMDLs for the Tijuana River Watershed. Effective implementation by CalRecycle of its 5-year waste tire management plan will be critical to meeting trash load allocations in the Tijuana River Watershed.

SB 310(Ducheny) Water quality: storm water and other runoff. This bill (1) allows Copermittees under a municipal separate storm sewer system (MS4) permit to prepare a Watershed Improvement Plan (WIP); (2) authorizes Regional Water Boards to participate in the preparation of a WIP; (3) requires Regional Water Boards to review, and authorizes Regional Water Boards to approve, WIPs; (4) requires the State Water Board to adopt a fee schedule to pay for the Regional Water Board's review and oversight of WIPs; and (5) authorizes local agencies to collect fees to support preparation and implementation of WIPs.

The Water Boards' budget for this fiscal year included 1 PY (\$158,000) for implementation of the watershed improvement planning requirements of SB 310. Fees for the WIPs were also included in the State Water Board's fee regulations. The funding in the budget is available to the Water Boards on a reimbursement basis if there is an actual SB 310 project and a project proponent who has paid the fees.

SB 790(Pavley) Resources: water quality: storm water resource plans. This bill authorizes local governments to develop “storm water resource plans” to identify, on a watershed basis, opportunities for increasing water supplies and improving water quality through storm water management. In addition, this bill would authorize grants in accordance with the Watershed, Clean Beaches, and Water Quality Act for projects that implement low impact development (LID) for new or existing development, and for projects to implement storm water resource plans. The San Diego Water Board’s three MS4 Permits encourage the Copermitttees to undertake a holistic approach to storm water management as envisioned by this bill.

SB 346(Kehoe) Hazardous materials: motor vehicle brake friction materials. This bill phases out the use of various heavy metals and other toxic substances in motor vehicle brake pads. Specifically, the bill l: 1) prohibits the sale of motor vehicle brake pads containing cadmium, chromium VI, lead, mercury and asbestos fibers beginning January 1, 2014; 2) prohibits the sale of all brake pads that contain more than 5 percent copper by January 1, 2021; and 3) prohibits the sale of all brake pads that contain more than 0.5 percent copper by January 1, 2025. The San Diego Water Board identified brake pads as a significant source of copper discharged to Chollas Creek in the *Chollas Creek Total Maximum Daily Load for Copper, Lead and Zinc*.

SB 518(Lowenthal) Building standards: graywater. This bill requires the California Building Standards Commission to adopt building standards for the construction, installation, and alteration of graywater systems for indoor and outdoor uses in nonresidential occupancies, in accordance with prescribed requirements. The bill also terminates the authority of the Department of Water Resources to adopt standards for graywater systems in nonresidential occupancies upon adoption of the standards by the commission. These uniform, statewide standards will expedite the local permitting of gray water system projects. The San Diego Water Board adopted a conditional waiver of WDRs for graywater systems that are designed and installed according to the California Plumbing Code Graywater Standards, and that comply with other city, county, or local permitting requirements. This bill does not affect the waiver.

SB 918(Pavley) Water recycling. This bill requires the Department of Public Health (DPH) 1) to develop and adopt as regulations, uniform water recycling criteria for indirect potable water reuse for groundwater recharge by December 31, 2013, and for surface water augmentation by December 31, 2016; 2) to investigate and report to the Legislature on the feasibility of developing water recycling criteria for direct potable reuse; and 3) in consultation with the State Water Board, to report annually to the Legislature on progress toward adopting water recycling criteria.

There are no groundwater recharge projects using recycled water in the San Diego Region at this time. The Helix Water District, however, is developing a Report of Waste Discharge for such a project in the El Monte Basin. Uniform recycling criteria should expedite the issuance of WDRs by negating the need for the San Diego Water Board to consult with the DPH on a project-by-project basis before issuing WDRs for recycled water recharge projects.

The City of San Diego is developing a pilot project to test the feasibility of direct potable reuse of recycled water. In the absence of uniform water recycling criteria for such projects, the San Diego Water Board will need to develop project-specific requirements in consultation with the DPH for the City's and any other future direct potable reuse projects.

SB 1284(Ducheny) Water quality: mandatory minimum civil penalties. This bill makes several revisions to the Mandatory Minimum Penalties (MMPs) statute. The bill exempts dischargers from MMPs for failing to file a discharge monitoring report, if the dischargers file a written statement that certifies that no discharges to surface water occurred and that specifies the reasons they failed to file a report. The bill limits MMPs to a single \$3,000 penalty for each failure to timely file a discharge monitoring report in situations where: 1) the discharger had not previously received a complaint to impose penalties for failing to file a report from the State Water Board or a Regional Water Board, 2) the discharges to surface waters did not violate effluent limitations, and (3) certain other conditions are met. The above mentioned provisions of the bill apply to violations for which an administrative civil liability complaint or a judicial complaint has not been filed before July 1, 2010, regardless of when the actual violations occurred, and the provisions would sunset on January 1, 2014. Finally, this bill allows a Regional Water Board to extend the time schedule imposed in a cease and desist order or a time schedule order for an additional five years, to allow a discharger to come into compliance with effluent limitations.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

Significant NPDES Permits,
WDRs, and Actions of the
San Diego Water Board

December 14, 2010

APPENDED TO EXECUTIVE OFFICER'S REPORT

DATE OF REPORT
December 7, 2010

**TENTATIVE SCHEDULE
SIGNIFICANT NPDES PERMITS, WDRS, AND ACTIONS
OF THE SAN DIEGO WATER BOARD**

Action Agenda Item	Action Type	Draft Complete	Public Review & Comment	Consent Item
January 2011 No Meeting Scheduled				
February 9, 2011 Regional Board Meeting San Diego Water Board Office				
WDR Rescissions: Navy Milcon Project P-326, Navy Milcon Project P-700A, Port District 10 St. Terminal, and Navy Homeporting Project (<i>Amanda Dai</i>)	Tentative Order	90%	0%	Yes
Modification of WDRs for Cowboy Country RV Resort to accommodate Name Change (<i>Fisayo Osibodu</i>)	Tentative Addendum	90%	0%	Yes
Eastern Municipal Water District, Temecula Regional Water Reclamation Facility (<i>Chris Means</i>)	Administrative Civil Liability	90%	90%	no
Negative Declaration for Waiver for Alternative On-site Wastewater Treatment Systems in Riverside County (<i>Fisayo Osibodu</i>)	Neg. Dec. Adoption	100%	50%	No
Waiver for Alternative On-site Wastewater Treatment Systems in Riverside County (<i>Fisayo Osibodu</i>)	New Waiver Issuance	100%	50%	No
Former Teledyne Ryan Facility (<i>Tom Alo</i>)	CAO Addendum	90%	0%	No
Poseidon Mitigation Site Approval (<i>Eric Becker & Chiara Clemente</i>)	Tentative Resolution	0%	50%	No
US Navy--Naval Base San Diego (including Graving Dock) - San Diego Bay (<i>Kristin Schwall</i>)	NPDES Permit Reissuance	80%	0%	maybe
Use of Expedited Payment Letters by the Regional Board (<i>Haas & Hagan</i>)	Informational Item	NA	NA	NA
Waste Discharge Requirements for Wineries in the San Diego Region (<i>Grove</i>)	Informational Item	NA	NA	NA
Jack Eitzen, Administrative Civil Liability, for violations of Order 99-08-DWQ (<i>Rebecca Stewart</i>)	Administrative Civil Liability	15%	25%	no
Jack Eitzen, Administrative Civil Liability, for violations of Basin Plan Prohibitions 1 and 14 and Order No. 99-08-DWQ. (<i>Rebecca Stewart</i>)	Administrative Civil Liability	10%	5%	no
Healthy Times, Inc., Administrative Civil Liability, for violations of Order 97-03-DWQ (<i>Jeremy Haas</i>)	Administrative Civil Liability	15%	15%	no
March 9, 2011 Regional Board Meeting San Diego Water Board Office				
NPDES General Permit for Fireworks - San Diego Region (<i>Michelle Mata</i>)	NEW NPDES General Permit	75%	40%	No
Negative Declaration for WDRs for Alternative On-site Wastewater Treatment Systems in the San Diego Region (<i>Fisayo Osibodu</i>)	Tentative Resolution	50%	0%	No
WDRs for Alternative On-site Wastewater Treatment Systems in the San Diego Region (<i>Fisayo Osibodu</i>)	Tentative Order	50%	0%	No

September 2010 - Summary of Public Sanitary Sewer Overflows in Region 9												
Responsible Agency	Collection System	Total Number of SSO locations	Total Vol of SSOs (gal)	Total Vol Recovered (gal)	Total Vol Reaching Surface Water	Percent Recovered	Percent Reaching Surface Water	Miles of Pressure Sewer	Miles of Gravity Sewer	Miles of Laterals	Total Number of SSO locations per 100 miles of Sewer	Tot Vol of SSOs Reaching Surface Water per 100 miles of Sewer
Category 1 SSO												
AC/S Environmental Security, MCB Camp Pendleton	Usmc Base, Camp Pendleton CS	1	12,000	11,400	0	95	0	32	104	80	0.4	0
Chula Vista City	City Of Chula Vista CS	1	4,000	3,800	200	95	5	2.6	488	0	0.2	40.7
Imperial Beach City	City Of Imperial Beach CS	1	30	29	1	96	3	4.4	39.5	0.3	2.2	2.2
La Mesa City	City Of La Mesa CS	1	15	7	0	46	0	0	155	0	0.6	0
Moulton Niguel Water District	Moulton Niguel Water District CS	1	1,500	0	1,500	0	100	20	510	0	0.1	283
San Diego City	San Diego City CS	1	94	40	0	42	0	145	3,002.00	2,000.00	0	0
South Coast Water District	South Coast Water District CS	1	525	50	475	9	90	3.2	138	0	0.7	336.4
Category 2 SSO												
AC/S Environmental Security, MCB Camp Pendleton	Usmc Base, Camp Pendleton CS	1	150	0	0	0	0	32	104	80	0.4	0
El Cajon City	City Of El Cajon CS	1	40	0	0	0	0	0	195	0	0.5	0
Fallbrook Public Utility Dist	Fallbrook Plant 1, Oceanside of CS	1	250	250	0	100	0	4.6	76.8	0	1.2	0
Laguna Beach City	City Of Laguna Beach CS	1	85	85	0	100	0	4.5	95	0	1	0
RAINBOW MWD	Rainbow Municipal Water Dist CS	1	388	0	0	0	0	4	52	0	1.7	0
San Diego City	San Diego City CS	1	154	0	0	0	0	145	3,002.00	2,000.00	0	0
San Juan Capistrano City	City Of San Juan Capistrano CS	1	100	100	0	100	0	0.2	123	0	0.8	0
TOTALS		14	19331	15761	2176			397.5	8084.3	4160.3		

CS = Collection System

October 2010 - Summary of Public Sanitary Sewer Overflows in Region 9

Responsible Agency	Collection System	Total Number of SSO locations	Total Vol of SSOs (gal)	Total Vol Recovered (gal)	Total Vol Reaching Surface Water	Percent Recovered	Percent Reaching Surface Water	Miles of Pressure Sewer	Miles of Gravity Sewer	Miles of Laterals	Total Number of SSO locations per 100 miles of Sewer	Tot Vol of SSOs Reaching Surface Water per 100 miles of Sewer
Category 1 SSO												
AC/S Environmental Security, MCB Camp Pendleton	Usmc Base, Camp Pendleton CS	1	25	0	25	0	100	32	104	80	0.4	11.5
Carlsbad MWD	Carlsbad MWD CS	2	254,310	251,999	2,311	99	0	4.8	282	0	0.6	805.7
La Mesa City	City Of La Mesa CS	1	565	300	265	53	46	0	155	0	0.6	170.9
Leucadia Wastewater District	Leucadia Wastewater District CS	1	69,780	0	69,780	0	100	11.4	191	0	0.4	34,476.20
San Diego Cnty Dept of Public Works	County Of San Diego CS	1	4,950	2,725	1,100	55	22	4	371	0	0.2	293.3
Category 2 SSO												
Agricultural Association	22nd District Agricultural Association CS	1	50	50	0	100	0	0.7	1.6	0.4	37	0
AC/S Environmental Security, MCB Camp Pendleton	Usmc Base, Camp Pendleton CS	2	150	45	0	30	0	32	104	80	0.9	0
Fallbrook Public Utility Dist	Fallbrook Plant 1, Oceanside of CS	1	300	300	0	100	0	4.6	76.8	0	1.2	0
RAINBOW MWD	Rainbow Municipal Water Dist CS	1	194	0	0	0	0	4	52	0	1.7	0
South Coast Water District	South Coast Water District CS	1	50	50	0	100	0	3.2	138	0	0.7	0
UC San Diego	University Of California, San Diego CS	1	5	5	0	100	0	2	25	3	3.3	0
TOTALS		13	330379	255474	73481			98.7	1500.4	163.4		
CS = Collection System												

Sep and Oct 2010 - Summary of Private Lateral Sewage Discharges in Region 9

Reporting Agency	Collection System	Total Number of PLSD locations	Total Vol of PLSDs (gal)	Total Vol Recovered (gal)	Total Vol Reaching Surface Water	Percent Recovered	Percent Reaching Surface Water	Miles of Private Lateral	Total Number of PLSD locations per 100 miles of Sewer	Tot Vol of PLSDs Reaching Surface Water per 100 miles of Sewer
Category 1 PLSD										
Carlsbad MWD	Carlsbad MWD CS	1	50	0	0	0	0	124	0.8	0
Chula Vista City	City Of Chula Vista CS	1	1,000	950	50	95	5	0	0	0
Padre Dam Municipal Water District	Padre Dam CS	1	100	0	100	0	100	160	0.6	62.5
San Diego City	San Diego City CS	6	1,804	1,435	236	79	13	4,049.00	0.2	11.5
Category 2 PLSD										
Coronado City	City Of Coronado CS	1	30	30	0	100	0	50	2	0
Carlsbad MWD	Carlsbad MWD CS	3	365	345	0	94	0	124	2.4	0
Chula Vista City	City Of Chula Vista CS	1	50	30	20	60	40	0	0	0
Eastern Municipal Water District	Temecula Valley RCS	1	40	0	0	0	0	0	0	0
Escondido City	Harrf Disch To San Elijo Oo CS	2	110	60	0	54	0	83.2	2.4	0
Fallbrook Public Utility Dist	Fallbrook Plant 1, Oceanside of CS	1	50	50	0	100	0	18	5.5	0
Padre Dam Municipal Water District	Padre Dam CS	1	10	0	0	0	0	160	0.6	0
San Diego City	San Diego City CS	4	618	568	0	91	0	4,049.00	0.1	0
Vallecitos Water District	Meadowlark CS	1	15	10	0	66	0	298	0.3	0
Valley Center MWD	Lower Moosa Canyon Recl Facil CS	1	300	10	0	3	0	14	7.1	0
Vista City	City Of Vista CS	1	50	48	2	96	4	151.5	0.6	1.3
TOTAL		26	4592	3536	408			9280.7		

CS = Collection System

Attachment B-4: Solar Panel Arrays at Box Canyon Landfill, Camp Pendleton

Each solar panel array has 4 concrete footings that have been placed on top of gravel beds to minimize damage to the landfill cap. There are 2 telescoping panel legs per footing that can be adjusted as needed to maximize sunlight capture. Also, each array is composed of several smaller solar panels that are separated from each other to reduce damage to the landfill cap due to rainfall runoff from the panels.



The electrical transmission lines from the solar arrays are run aboveground within metal conduits. All of the infrastructure for the solar panel arrays is aboveground, which allows easy access for solar system repairs/modifications and landfill cap maintenance.



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Office of Enforcement

1001 I Street • Sacramento, California 95814 • (916) 341-5277
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
Fax (916) 341-5284 • <http://www.waterboards.ca.gov>



Arnold Schwarzenegger
Governor

July 30, 2010

LB/L-Sun Cal Mandalay, LLC
c/o C.A. Rasmussen, Inc.
Attn: Tim MacDonald
Vice President
Westport at Mandalay Bay
28548 Livingston Avenue
Valencia, CA 91355-4171

VIA CERTIFIED MAIL NO.
7003 3110 0003 0767 7533

No. SWB-2008-4-0050– OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM RELATING TO VIOLATIONS OF NPDES PERMIT TESORO WESTPOST AT MANDALAY BAY WOOLEY ROAD, OXNARD CA (ORDER NO. R4-2002-0184, CI NO. 8282, WDID NO. 4A562445001)

Dear Mr. MacDonald:

This letter is to notify LB/L-SunCal Mandalay, LLC c/o C.A. Rasmussen, Inc. (hereinafter "PERMITTEE" or "you") of alleged violations of the California Water Code identified in the State Water Resources Control Board's (State Water Board) water quality data system and to allow the PERMITTEE to participate in the Water Boards' Expedited Payment Program for Effluent and/or Reporting Violations (Expedited Payment Program) to address liability which may be assessed pursuant to Water Code sections 13385 and 13385.1.

NOTICE OF VIOLATION:

Based on information in the California Integrated Water Quality System (CIWQS) as of July 2010, the State Water Board's Office of Enforcement alleges that the PERMITTEE has violated the effluent limitations, reporting violations, or Water Code provisions identified in the Notice of Violation (NOV) attached as Exhibit "A". The Permittee will have the opportunity to address the alleged violations as discussed below.

STATUTORY LIABILITY:

Subdivisions (h) and (i) of California Water Code section 13385 require the assessment of a MANDATORY MINIMUM PENALTY of \$3,000 for specified serious and chronic effluent limit violations. The PERMITTEE is subject to discretionary administrative civil liabilities of up to TEN THOUSAND DOLLARS (\$10,000) for each day in which the violation occurs, plus TEN DOLLARS (\$10) for each gallon discharged but not cleaned

up in excess of 1,000 gallons. These mandatory minimum penalties and discretionary administrative civil liabilities may be assessed by a Regional Water Quality Control Board (Regional Water Board) or the State Water Board (collectively "the Water Boards"), beginning with the date that the violations first occurred¹. The formal enforcement action which the Water Boards use to assess such liability is an administrative civil liability complaint although the Water Boards may instead refer such matters to the Attorney General's Office for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000) per violation. In addition, the Superior Court may assess up to TWENTY FIVE DOLLARS (\$25) per gallon discharged but not cleaned up in excess of 1,000 gallons.

OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM:

The PERMITTEE can avoid the issuance of a formal enforcement action and settle the alleged violations identified in the attached NOV by participating in the Water Boards' Expedited Payment Program. Details of the proposed settlement are described below and addressed in the enclosed documents.

To promote resolution of these violations, the State Water Board makes this Conditional Offer. The PERMITTEE may accept this offer, waive the PERMITTEE'S right to a hearing, and pay the mandatory minimum penalty as indicated on Exhibit A, for the violations described in the NOV. If the PERMITTEE elects to do so, subject to the conditions below, the State Water Board will accept that payment in settlement of any enforcement action that would otherwise arise out of the violations identified in the Notice of Violation. Accordingly, the State Water Board will forego issuance of a formal administrative complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in the Notice of Violation. Resolution of these violations by the State Water Board will preclude Regional Water Board action for these same violations.

The Expedited Payment Program does not address or resolve liability for any violation that is not specifically identified in the Notice of Violation.

PERMITTEE'S OPTIONS FOR RESPONSE TO OFFER:

If you accept this offer, please complete and return the enclosed "Acceptance of Conditional Resolution and Waiver of Right to Hearing, (proposed) Order" (Acceptance and Waiver) on or before thirty (30) days from the date of this letter. The Acceptance and Waiver will be held, pending a 30-day public notice period, and then will be counter-signed by the Executive Director and returned to you with an invoice for payment.

¹ Please note that there are no statutes of limitation that apply to administrative proceedings to assess mandatory minimum penalties. See *City of Oakland v. Public Employees' Retirement System*, (2002) 95 Cal.App.4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)

If you contest some but not all of the violations identified in the attached Notice of Violation, the PERMITTEE may elect to reserve the right to address the contested matters and resolve any uncontested violations through the payment of the mandatory minimum penalty for each uncontested violation. If the PERMITTEE chooses this option, please communicate with the staff contact identified below to discuss the mechanism for memorializing that election on or before the due date.

If the PERMITTEE chooses to contest any of the violations alleged in the Notice of Violation, please identify the specific violation and the basis for the challenge (factual error, affirmative defense, etc.) on or before the due date. The State Water Board staff will evaluate the contested violation and take one of two actions:

- 1) The State Water Board staff will determine that the violation is not supported, verify that determination with the Regional Water Board, expunge the alleged violation from the CIWQS data base once the Regional Water Board verifies the determination, take no further action against the PERMITTEE for the alleged violation, and notify the PERMITTEE of that determination;
- 2) The State Water Board staff, in consultation with the Regional Water Board staff, will determine that the alleged violation is meritorious, and will notify the PERMITTEE of that determination. The PERMITTEE will be given thirty (30) days from the date of receipt of the State Water Board staff determination, to submit a supplemental Expedited Payment for those violations. If the PERMITTEE chooses not to make a payment in response to the determination, the PERMITTEE should expect to be contacted regarding formal enforcement action that will be initiated with regard to the contested violations. In a formal enforcement action, the liability amount sought and/or imposed may exceed the liability amount set forth in this Conditional Offer. Moreover, the cost of enforcement is a factor which can be considered in assessing the liability amount.

CONDITIONS FOR STATE WATER BOARD ACCEPTANCE OF RESOLUTION:

Federal regulations require the State Water Board to publish and allow the public thirty (30) days to comment on any settlement of an enforcement action addressing NDPES permit violations (40 C.F.R. section 123.27(d)(2)(iii)). Upon receipt of the PERMITTEE's Acceptance and Waiver, the State Water Board staff will publish a notice the proposed resolution of the violations.

If no comments are received within the 30-day period, and unless there are new material facts that become available to the Water Boards, the Executive Director will execute the Acceptance and Waiver as a stipulated order assessing the uncontested mandatory minimum penalty amount pursuant to Water Code section 13385.

If, however, significant comments are received in opposition to the settlement, this Offer may be withdrawn. In that case, the PERMITTEE's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. In that case, the unresolved violations will be addressed in a liability assessment proceeding. At the liability assessment hearing the PERMITTEE will be free to make arguments as to any of the alleged violations, and the PERMITTEE's agreement to accept this conditional offer will not in any way be binding or used as evidence against the PERMITTEE. The PERMITTEE will be provided with further information on the liability assessment proceeding.

In the event the Acceptance and Waiver is executed by the Executive Director, payment of the assessed amount shall be due and payable to the State Water Board as specified on the invoice that will accompany the PERMITTEE's receipt of the notice of the Executive Director's execution. The payment period is thirty (30) days. Failure to pay the penalty within the required time period may subject the PERMITTEE to further liability.

Should you have any questions about the Notice of Violation or the Conditional Offer, please contact Erin Mustain at (916) 445-9379 regarding this matter.

Sincerely,

REED SATO
Director, Office of Enforcement

Encl. – Exhibit "A" - Notice of Violation
Acceptance of Conditional Resolution

cc: VIA CERTIFIED MAIL NO.
7003 3110 0003 0767 7540

Mr. Mike Walline
Suncal Companies
2392 Morse Ave
Irvine, CA 92614-6234