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California Regional Water Quality Control Board San Diego Region

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November 30, 2009

Certified Mail – Return Receipt
Article No. 7009 1410 0002 2347 6804

Chandra L. Wallar
Deputy Chief Administrative Officer
County of San Diego
Land Use and Environment Group
1600 Pacific Highway, Room 212
San Diego, California 92101

In reply refer to: Place ID 255223 fmelbourn

NOTICE OF HEARING AND ISSUANCE OF COMPLAINT NO. R9-2009-0089 FOR ADMINISTRATIVE CIVIL LIABILITY AGAINST THE COUNTY OF SAN DIEGO FOR VIOLATIONS OF ORDER NO. R9-2007-0001

Dear Ms. Wallar:

Enclosed find Complaint No. R9-2009-0089 (Complaint) for Administrative Civil Liability against the County of San Diego (County) for \$77,800 for alleged violations of Order No. R9-2007-0001, *NPDES No. CAS0108758, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority*. The Violations are described in the Complaint and the attached Technical Analysis to the Complaint.

Waiver of Hearing

Pursuant to Water Code section 13323, the California Regional Water Quality Control Board, San Diego Region (Regional Board) will hold a hearing on the Complaint no later than ninety (90) days after it is issued. The County may elect to waive its right to a hearing before the Regional Board. Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount of \$77,800 as set forth in the Complaint. For the Regional Board to accept the waiver of the County's right to a public hearing, the County must submit the following to the Regional Board by 5 p.m., **Monday, January 4, 2010**.

1. The enclosed waiver form signed by an authorized agent of the County;
2. A check for the full amount of civil liability of \$77,800 made out to the "State Water Resources Control Board"; and

California Environmental Protection Agency

3. Verification that the enclosed public notice has been published in the San Diego Union-Tribune.

Public Hearing

Alternatively, if the County elects to proceed to a public hearing, a hearing is tentatively scheduled to be held at the Regional Board meeting on February 10, 2010. The meeting is scheduled to convene at the Regional Board Office, 9174 Sky Park Court, Suite 100, San Diego, California and the meeting will begin at 9 a.m. At that time, the Regional Board will accept testimony and public comment and decide whether to affirm, reject, or modify the proposed liability, or whether to refer the matter for judicial civil action.

Enclosed you will find procedures I am recommending that the Regional Board follow in conducting the hearing. Please note that comments on the proposed procedures are due by **December 14, 2009**, to the Regional Water Board's advisory attorney, Catherine Hagan at the address indicated in the hearing procedures.

Please contact Mr. Frank Melbourn of my staff at (858) 467-2973 or by e-mail at fmelbourn@waterboards.ca.gov if you have any questions concerning this matter. The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Respectfully,



MICHAEL P. McCANN
Assistant Executive Officer

MPM:ftm

- Enclosures:
1. Complaint No. R9-2009-0089
 2. Technical Analysis
 3. Waiver of Public Hearing Form
 4. Newspaper Notice of Waiver of Public Hearing
 5. Proposed Hearing Procedures

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Order No.	R9-2007-0001 (San Diego Municipal NPDES Storm Water Permit)
NPDES No.	CAS0108758
CIWQS Place ID	255223 (County of San Diego MS4)
WDID	9 0000510S1
Reg. Measure No.	372074 (ACL Complaint R9-2009-0089), 214386 (R9-2007-0001 Co. of San Diego)
Party ID	39617 (County of San Diego Dept. of Environmental Health)
Person ID	515427 (Chandra Wallar)

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

IN THE MATTER OF:)	COMPLAINT NO. R9-2009-0089
)	FOR
COUNTY OF SAN DIEGO)	ADMINISTRATIVE CIVIL LIABILITY
MUNICIPAL SEPARATE STORM)	
SEWER SYTEM)	VIOLATIONS OF
)	ORDER NO. R9-2007-0001

THE COUNTY OF SAN DIEGO IS HEREBY NOTIFIED THAT:

1. The County of San Diego is alleged to have violated Water Code section 13385(a)(2) for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability pursuant to Water Code section 13385(c)(1).
2. On January 24, 2007, the Regional Board adopted Order No. R9-2007-0001, *NPDES No. CAS0108758, Waste Discharge Requirements For Discharges Of Urban Runoff From The Municipal Separate Storm Sewer Systems (MS4s) Draining The Watersheds Of The County Of San Diego, The Incorporated Cities Of San Diego County, The San Diego Unified Port District, and The San Diego County Regional Airport Authority*. The County is a named Copermittee to Order No. R9-2007-0001.
3. The County owns and operates a municipal separate storm sewer system through which it discharges urban runoff into waters of the United States within the San Diego Region pursuant to Order No. R9-2007-0001.
4. Order No. R9-2007-0001, Provision D.2.a.(1) requires the County to do the following: "Within 365 days of adoption of this Order, each Copermittee shall review and update its grading ordinances and other ordinances as necessary to achieve full compliance with this Order, including requirements for the implementation of all designated BMPs and other measures." On December 12, 2007, the Regional Board adopted Addendum No. 1 to Order No. R9-2007-0001 granting the Copermittees' request for an additional 60 days to update their ordinances due to the regional wildfires of November 2007. Therefore, the ordinance review and update was to be completed no later than March 23, 2008.
5. Order No. R9-2007-0001 Attachment C, Definitions, defines "Wet Season" as "October 1 through April 30 of each year." "Wet Season" and "Rainy Season" are used interchangeably throughout the permit.
6. Order No. R9-2007-0001, Provision D.2.c.(3) requires the County to do the following: "Each Copermittee shall implement, or require the implementation of, the designated minimum BMPs and any additional measures necessary to

comply with this Order at each construction site within its jurisdiction year round. However, BMP implementation requirements can vary based on Wet and Dry Seasons. Dry Season BMP implementation must plan for and address rain events that may occur during the Dry Season. Provision D.2.c.(1)(b)(iii) states that “[s]lope stabilization on all inactive slopes during the Rainy Season and during rain events in the Dry Season” is one of the designated minimum set of BMPs at construction sites.

7. Order No. R9-2007-0001, Provision D.2.d.(1-3) requires the County to do the following:
 - “(1) During the Wet Season, each Copermittee shall inspect at least biweekly (every two weeks), all construction sites within its jurisdiction meeting the following criteria:
 - (a) All sites 50 acres or more in size and grading will occur during the Wet Season;
 - (b) All sites 1 acre or more, and tributary to a CWA section 303(d) water body segment impaired for sediment or within or directly adjacent to or discharging directly to a receiving water within an ESA; and
 - (c) Other sites determined by the Copermittees or the Regional Board as a significant threat to water quality. In evaluating threat to water quality, the following factors shall be considered:
 - i. soil erosion potential;
 - ii. site slope;
 - iii. project size and type;
 - iv. sensitivity of receiving water bodies;
 - v. proximity of receiving water bodies;
 - vi. non-storm water discharges;
 - vii. past record of non-compliance by the operators of the construction site; and
 - viii. any other relevant factors.
 - (2) During the Wet Season, each Copermittee shall inspect at least monthly, all construction sites with one acre or more of soil disturbance not meeting the criteria specified above in section D.2.c.(1).
 - (3) During the Wet Season, each Copermittee shall inspect as needed, construction sites less than 1 acre in size.”

8. On September 30, 2008, the County informed the Regional Board in its Jurisdictional Urban Runoff Management Plan, Annual Report Fiscal Year 2007-2008 (Report) that it began complying with Order No. R9-2007-0001's construction site inspection requirements on July 1, 2007.
9. On October 18, 2000, the County's Department of Public Works issued a Director's Letter of Instruction (DLI) to provide guidance to County staff in implementing the County's storm water program as required by Order No. R9-2007-0001, including inspecting "developer and single-family grading permits and other construction activities." The DLI was revised on January 8, 2008, and is scheduled to sunset on January 8, 2014.
10. This Administrative Civil Liability Complaint is issued under authority of Water Code section 13323.

ALLEGATIONS

11. Failure to Provide Adequate Authority to Achieve Full Compliance with the Order
The County violated Order No. R9-2007-0001 Provision D.2.a.(1) on March 24, 2008, when it amended its storm water ordinance on March 12, 2008, by changing the definition of "Rainy Season" from "October 1 through April 30" to "November 11 through April 30" contrary to Order No. R9-2007-0001's definition of "October 1 through April 30 of each year." On August 5, 2009, the County corrected the definition by amending its ordinance. Therefore, the days of violation are 498 (March 24, 2008, to August 4, 2009).
12. Failure to Require Construction Site BMPs During the Wet Season
The County violated Order No. R9-2007-0001 Provision D.2.c.(3) by failing to require "slope stabilization on all inactive slopes during the Rainy Season" from October 1, 2007, to November 10, 2007, and from October 1, 2008, to November 10, 2008. The DLI states that "[d]uring the Non-Rainy Season from May 1 through November 10, the Developer may opt to employ 'weathered triggered' action plans¹ in lieu of fully deployed BMPs." As a result, the County allowed Developers to leave inactive slopes unprotected from October 1 to November 10 in 2007 and 2008, if the Developer implemented a "weather triggered" action plan. Therefore, the days of violation are 80 (October 1 to November 10, 2007, and October 1 to November 10, 2008).
13. Failure to Inspect Construction Sites During the Wet Season
The County violated Order No. R9-2007-0001 Provision D.2.d.(1-3) by failing to inspect construction sites during the Wet Season from October 1, 2007, to November 10, 2007, and from October 1, 2008, to November 10, 2008, because

¹ A "weather triggered" action plan allows the developer to store on site 125% of the necessary BMP materials that are to be deployed within 48 hours of a 50% chance or greater rain event of 0.5 inches or more.

the County's inspection frequencies were based upon the County's Wet Season and therefore didn't begin until November 11. Therefore, the days of violation are 80 (October 1 to November 10, 2007, and October 1 to November 10, 2008).

14. Pursuant to Water Code section 13385, the maximum civil liability that the Regional Board may impose for a violation of a waste discharge requirement is \$10,000 per day of violation. Therefore the maximum liability that may be imposed by the Regional Board for the violations alleged in Paragraphs 11 through 13 is as follows: Paragraph 11: \$4.98 million; Paragraph 12: \$800,000; and Paragraph 13: \$800,000. The total maximum liability that the Regional Board may impose for these violations is \$6.58 million.
15. The amount of discretionary assessment is based upon consideration of factors described in Water Code section 13385(e) as applied to the allegations and described further in the technical analysis.

PROPOSED CIVIL LIABILITY

16. Based on the considerations of the factors listed in section 13385 of the Water Code, civil liability should be imposed on the County of San Diego by the Regional Board in the following amounts: \$49,800 (\$100 per day of violation) for the violation alleged in Paragraph No. 11; \$8,000 (\$100 per day of violation) for the violation alleged in Paragraph No. 12; and \$20,000 (\$250 per day of violation) for the violation alleged in Paragraph No. 13. The total liability for all alleged violations is \$77,800. The proposed civil liability will permit the recovery of costs incurred by Regional Board staff in investigating the claims and in pursuing this enforcement action.

Dated this 30th day of November 2009.



MICHAEL P. McCANN, P.E.
Assistant Executive Officer

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