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Secretary for
Environmental Protection

California Regional Water Quality Control Board San Diego Region

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November 24, 2009

Certified Mail – Return Receipt Requested
Article No. 7009 1410 0002 2347 6781

Jim Barrett, Director
Metropolitan Wastewater Department
City of San Diego
9192 Topaz Way
San Diego, California 92123
jbarrett@sandiego.gov

In reply refer to:
Place ID: 631631:fmelbourn

Dear Mr. Barrett:

ADOPTION OF ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R9-2009-0172, AUGUST 20, 2007, LAKE HODGES SEWAGE SPILL

On November 18, 2009, the California Regional Water Quality Control Board, San Diego Region (Regional Board), adopted Administrative Civil Liability Order No. R9-2009-0172 against the City of San Diego (City). Order No. R9-2009-0172 assessed a total liability of \$680,278 against the City for discharging sewage into Lake Hodges in violation of Water Code section 13376.

The City shall submit a check to the Regional Board in the amount of six hundred and twenty thousand two hundred seventy-eight dollars (\$620,278) payable to the "State Water Resources Control Board" for deposit into the State Water Pollution Cleanup and Abatement Account within thirty (30) days of adoption of Order No. R9-2009-0172. Up to \$60,000 of the \$680,278 liability shall be permanently suspended if the City submits payment up to the amount of \$60,000 to the Santa Fe Irrigation District (Irrigation District) to provide reimbursement for the Irrigation District's costs in obtaining replacement water while water pumping from Lake Hodges was ceased for ten days due to the sewage spill. The City shall provide evidence to the Regional Board of payment to the Irrigation District by December 23, 2009. Failure to pay the full amount within 30 days from the date of this Order will result in the remaining balance, up to \$60,000, being immediately due and payable to the State Water Resources Control Board for deposit into the Cleanup and Abatement Account.

Failure to submit payment as required by Order No. R9-2009-0172 may result in the referral of this matter to the Attorney General for further enforcement.

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

California Environmental Protection Agency

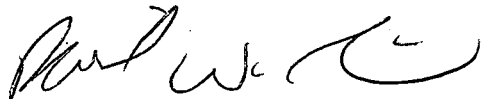
Jim Barrett, Director
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City of San Diego
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Lake Hodges Sewage Spill

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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,



DAVID W. GIBSON
Executive Officer

DWG:ftm:jmn

Enclosure: ACL Order R9-2009-0172

cc: Michael Bardin, Santa Fe Irrigation District, mbardin@sfidwater.org
David Boyers, State Water Resources Control Board, DBoyers@waterboards.ca.gov
Ken Greenberg, U.S. EPA, Greenberg.ken@epa.gov
Andre Monette, Best Best & Krieger LLP, Andre.Monette@bbkllaw.com
Ann Sasaki, Metropolitan Wastewater Dept., asasaki@sanidiego.gov
Sean Sterchi, CA Dept. of Public Health, sssterchi@dhs.ca.gov
Sharon Taylor, U.S. Fish & Wildlife Service, Sharon_Taylor@fws.gov
Christopher Toth, Metropolitan Wastewater Dept., ctoth@sanidiego.gov
Larry Watt, San Dieguito Water District, water@ci.encinitas.ca.us
Thomas Zeleny, City Attorney's Office, tzeleny@sanidiego.gov

CIWQS Information:
Regulatory Measure ID: 213943 (Enrollee),
368796 (ACL Order)
Place ID: 631631
Party ID: 8700

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

ORDER NO. R9-2009-0172

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST
CITY OF SAN DIEGO
SEWAGE COLLECTION SYSTEM
FOR
VIOLATION OF WATER CODE SECTION 13376
DISCHARGE OF SEWAGE INTO LAKE HODGES**

The California Regional Water Quality Control Board, San Diego Region (Regional Board) having held a public hearing on November 18, 2009, to hear evidence and comments on the allegations contained in Administrative Civil Liability Complaint R9-2009-0042, dated July 22, 2009, and deliberating on the evidence presented at the public hearing and in the record, after determining the allegations contained in the Complaint to be true, having provided public notice thereof and not less than thirty (30) days for public comment and on the recommendation for administrative assessment of Civil Liability in the amount of \$680,278 finds as follows:

1. The City of San Diego (City) owns and operates a large sewage collection system with approximately 3,000 miles of sewer lines and an estimated total wastewater flow of 180 million gallons per day.
2. The City is enrolled under California State Water Resources Control Board Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* (WDID No. 9SSO10658) that requires the City to operate and maintain its sewage collection system to prevent Sanitary Sewer Overflows (SSOs).
3. Prohibition C.1. of Order No. 2006-0003-DWQ states that "[a]ny SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited." Order No. 2006-0003-DWQ defines Sanitary Sewer Overflows as "[a]ny overflow, spill, release, discharge or diversion of untreated or partially treated wastewater from a sanitary sewer system."
4. Section 301 of the Federal Clean Water Act (33 U.S.C. §1311) and Water Code section 13376 prohibit the discharge of pollutants to navigable waters of the United States except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. State Board Order No. 2006-0003-DWQ is not an NPDES permit.
5. On or about August 20, 2007, and until August 24, 2007, the City discharged approximately 381,185 gallons of untreated wastewater from its Manhole No. K09N-

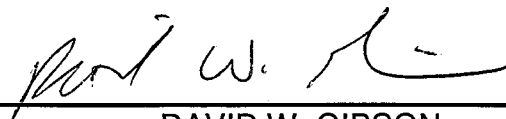
108 (located just south of Escala Drive in Rancho Bernardo) into Lake Hodges, a navigable water of the United States. In response to this event the Regional Board issued Notice of Violation No. R9-2007-0199 to the City on October 24, 2007, alleging a violation of Prohibition C.1. of Order No. 2006-0003-DWQ. On July 22, 2009, after investigating the spill and reviewing the information submitted by the City, the Regional Board issued Administrative Civil Liability Complaint No. R9-2009-0042 in the amount of \$680,278 to the City for allegedly violating Prohibition C.1. and C.2. of Order No. 2006-0003-DWQ, Federal Clean Water Act section 301, and Water Code section 13376.

6. Issuance of the Order is an enforcement action taken by a regulatory agency and is exempt from the provision of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This action is also exempt from the provisions of CEQA in accordance with section 15061(b)(3) of Chapter 3, Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
7. Consideration of the factors prescribed in Water Code section 13385(e) based upon information available to the Regional Board prior to the hearing and described in greater detail in the Staff Report for Complaint R9-2009-0042 supports the assessment of civil liability in the amount of \$620,278 as follows:
 - a. \$1.50 per gallon multiplied by 380,185 gallons of discharged sewage [381,185 gallons – 1,000 gallons cleaned up pursuant to Water Code § 13385(c)(2)] for a total of \$570,278; and
 - b. \$10,000 per day of discharge multiplied by five (5) days of discharge for a total of \$50,000.
8. In addition to the amount described in paragraph 7, the Regional Board finds that due to the Discharger's culpability, it is appropriate to also assess a liability of \$60,000. Further, it is appropriate to allow the City to reimburse the Sante Fe Irrigation District (Irrigation District) by up to \$60,000 for costs incurred by the Irrigation District to replace water normally drawn from Lake Hodges during Lake Hodges' 10-day closure, in which case this portion of the ACL will be permanently suspended. This additional amount is well within the maximum statutory ACL of \$3,841,850.
9. The Regional Board incurred costs of \$39,900 to prosecute the enforcement action; the costs include investigation, preparation of enforcement documents, communicating with the City and preparation of materials for public review and hearing.

IT IS HEREBY ORDERED, pursuant to Water Code section 13385, that civil liability be imposed upon the City of San Diego in the amount of \$680,278 for discharging pollutants to navigable waters of the United States in violation of Water Code section 13376.

1. The City of San Diego shall submit a check to the Regional Board in the amount of six hundred and twenty thousand two hundred seventy-eight dollars (\$620,278) payable to the "State Water Resources Control Board" for deposit into the State Water Pollution Cleanup and Abatement Account within thirty (30) days of adoption of this Order.
2. Up to \$60,000 of the liability shall be permanently suspended if the City submits payment up to the amount of \$60,000 to the Santa Fe Irrigation District to provide reimbursement for the Irrigation District's costs in obtaining replacement water while Lake Hodges was closed. The City shall provide evidence to the Regional Board of payment to the Irrigation District by December 23, 2009. Failure to pay the full amount within 30 days from the date of this Order will result in the remaining balance, up to \$60,000, being immediately due and payable to the State Water Resources Control Board for deposit into the Cleanup and Abatement Account.
3. Fulfillment of the City of San Diego's obligations under this Order constitutes full and final satisfaction of any and all liability for each allegation in Complaint No. R9-2009-0042.
4. The Executive Officer is authorized to refer this matter to the Office of the Attorney General for collection or other enforcement if the City of San Diego fails to comply with payment of the liability as detailed in paragraphs 1 or 2.

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



DAVID W. GIBSON
Executive Officer