

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

Tentative ORDER NO. R9-2008-0137

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST
SAN ELIJO JOINT POWERS AUTHORITY
SAN ELIJO OCEAN OUTFALL
FOR
VIOLATIONS OF ORDER R9-2005-0100**

The California Regional Water Quality Control Board, San Diego Region (Regional Board), having considered in a public meeting on November 12, 2008, all comments received on the issuance of liability against San Elijo Joint Powers Authority (SEJPA) regarding violations alleged in Complaint R9-2008-0006, dated May 16, 2008, (Complaint), 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 \$9,000 finds as follows:

1. SEJPA discharges treated wastewater into the Pacific Ocean that is subject to numeric effluent limitations, contained in Order R9-2005-0100, NPDES Permit No. CA0107999 *Waste Discharge Requirement for the San Elijo Joint Powers Authority, San Elijo Water Reclamation Facility Discharge to the Pacific Ocean Via the San Elijo Ocean Outfall, San Diego County.*
2. Between September 1, 2006 and September 1, 2007, SEJPA reported effluent sampling results to the Regional Board, pursuant to the Monitoring and Reporting schedule for Order R9-2005-0100, documenting violations of effluent limitations prescribed by Order R9-2005-0100.
3. Under California Water Code (CWC) Section 13385 subdivision (h), certain reported effluent violations are subject to mandatory penalties as determined by the following:
 - a. On September 7, 2006 San Elijo discharged effluent with a concentration of settleable solids at 6.0 ml/l, in violation of the instantaneous maximum effluent limitation of 3.0 ml/l as specified in Discharge Specifications B1 of Order No. R9-2005-0100. This violation exceeds the effluent limitation for a Group I pollutant by greater than 40%, and therefore is a serious violation and satisfies the requirements of a mandatory minimum penalty of \$3,000.
 - b. As a result of the high concentration of settleable solids discharged on September 7, 2006, the average settleable solids for the week of September 4 through 10, 2006 was calculated to be 2.2 ml/l, which violated the average weekly effluent limitation of 1.5 ml/l as specified in Discharge Specifications B1 of Order No. R9-2005-0100. This violation exceeds the limitation by greater than 40%, and therefore is a serious violation and satisfies the requirements of a mandatory minimum penalty of \$3,000.

- c. On August 1, 2007 San Elijo discharged effluent with a concentration of settleable solids at 5.0 ml/l, which exceeded the instantaneous maximum effluent limitation of 3.0 ml/l as specified in Discharge Specifications B1 of Order No. R9-2005-0100. This violation exceeds the limitation by greater than 40%, and therefore is a serious violation and satisfies the requirements of a mandatory minimum penalty of \$3,000.
4. Pursuant to CWC Section 13385 (h), the Regional Board must impose mandatory minimum penalties (MMPs) in the amount of nine thousand dollars (\$9,000) on San Elijo Joint Powers Authority.
5. On May 16, 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint R9-2008-0006 to SEJPA proposing the imposition of \$9,000 in liability for the above violations.
6. In a letter dated August 19, 2008, SEJPA waived its right to a public hearing before the Regional Board regarding the violations alleged in Complaint R9-2008-0006 and proposed to direct a portion of the recommended liability within the Complaint toward a supplemental environmental project (SEP). The proposed SEP would provide \$4,500 to the Southern California Coastal Water Research Project for a study of the contribution of atmospheric deposition of nutrients to coastal harmful algal blooms.
7. CWC Section 13385(l) allows the Regional Board to direct a portion of MMPs toward implementation of SEPs. The proposed SEP satisfies the provisions of Section IV, Part D of the State Water Resources Control Board Water Quality Enforcement Policy (Resolution 96-030 as amended).
8. Issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 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.
9. The Regional Board incurred costs totaling \$1,820, which includes investigation, preparation of enforcement documents, evaluation of the proposed SEP, and communication with SEJPA regarding the enforcement action.

IT IS HEREBY ORDERED, that pursuant to Section 13385 of the Water Code, that:

1. Civil liability is imposed on the San Elijo Joint Powers Authority (SEJPA) in the amount of \$9,000 to be paid as follows:
 - a. SEJPA shall submit a check to the Regional Board in the amount of \$4,500 payable to the "State Water Resources Control Board" within 30 days of adoption of this Order for deposit into the Cleanup and Abatement Account; and
 - b. SEJPA shall submit payment in the amount of \$4,500 to the Southern California Coastal Water Research Project (SCCWRP) to provide funding in support of the Supplemental Environmental Project (SEP) known as "Atmospheric Deposition and Harmful Algal Blooms," which shall be an element of the Atmospheric Deposition Component of the Bight '08 Survey. The SEJPA shall provide evidence to the Regional Board of payment in full to SCCWRP within 30 days from the date of this Order. Failure to pay the full amount within 30 days from the date of this Order will result in the full amount being immediately due and payable to the State Water Resources Control Board for deposit into the Cleanup and Abatement Account.
2. If the SEJPA publicizes the SEP or the results of the SEP, it will state in a prominent manner that the Project is being undertaken as part of the settlement of an enforcement action by the Regional Board.
3. The Executive Officer is authorized to refer this matter to the Office of the Attorney General for enforcement if the SEJPA fails to comply with paragraphs 1 or 2.
4. Fulfillment of the SEJPA's obligations under this Order constitutes full and final satisfaction of any and all liability for each allegation in Complaint R9-2008-0006.

I, John H. Robertus, Executive Officer, do hereby certify 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 12, 2008.

TENTATIVE

JOHN H. ROBERTUS
Executive Officer

CIWQS Entries
Regulatory Measure 352719
Place ID 255265
Party ID 39664
Violation IDs: 711583, 449366, 449373