

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

**REVISED TENTATIVE
ORDER NO. R9-2009-0048**

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
FOR
MANDATORY MINIMUM PENALTIES
AGAINST
SOUTH ORANGE COUNTY WASTEWATER AUTHORITY
SOUTH COAST WATER DISTRICT GROUNDWATER RECOVERY FACILITY
FOR
VIOLATIONS OF ORDER NO. R9-2006-0054, NPDES NO CA0107417**

The California Regional Water Quality Control Board, San Diego Region (Regional Board), having held a public hearing on May 13, 2009, to hear evidence and comments on the allegations contained in Complaint No. R9-2009-0028, dated February 27, 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 mandatory minimum penalties (MMPs) in the amount of \$204,000 finds as follows:

1. SOCWA owns and holds the NPDES permit for the San Juan Creek Ocean Outfall on behalf of all its member agencies (Order No. R9-2006-0054, NPDES No. CA0107417, *Waste Discharge Requirement for the South Orange County Wastewater Authority, Discharge to the Pacific Ocean Via the San Juan Creek Ocean Outfall, Orange County*).
2. The South Coast Water District (SCWD) operates the Groundwater Recovery Facility (Facility) and discharges brine to the San Juan Creek Ocean Outfall as a member agency under Order No. R9-2006-0054. Treated effluent discharged from the Facility into the Pacific Ocean through the San Juan Creek Ocean Outfall is subject to numeric effluent limitations contained in Order No. R9-2006-0054.

3. On February 27, 2009, the Assistant Executive Officer issued ACL Complaint No. R9-2009-0028 to SOCWA proposing to impose \$204,000 in liability for 68 alleged violations effluent limitations.
4. SOCWA has violated provisions of law for which the Regional Board may impose discretionary administrative civil liability pursuant to section 13385(a)(2) of the California Water Code (CWC) because every violation of an NPDES permit is subject to discretionary liability under CWC section 13385(a)(2).
5. SOCWA has violated provisions of law for which the Regional Board must impose MMPs pursuant to CWC sections 13385(h) and (i), as described in Attachment 1 to this Order. The violations consisted of effluent limitation exceedances of waste discharge requirements for discharges of pollutants from point sources to Waters of the United States.
 - a. Fifty eight (58) of the violations are subject to mandatory minimum penalties (MMPs) pursuant to CWC section 13385(h). CWC section 13385(h)(1) requires that an MMP of \$3,000 be imposed for each serious violation. CWC section 13385(h)(2) defines a 'serious' violation, as any waste discharge that violates an effluent limitation contained in waste discharge requirements (applying to surface water discharges) for a Group I pollutant by 40 percent or more or for a Group II pollutant by 20 percent or more. Total suspended solids, settleable solids, and turbidity are Group I pollutants as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations and Appendices A and B to the State Water Resources Control Board's Water Quality Enforcement Policy (February 2002); and
 - b. Ten (10) of the violations are subject to MMPs pursuant to CWC section 13385(i). CWC section 13385(i)(1) requires that an MMP of \$3,000 be imposed for each effluent limitation violation (i.e. any waste discharge that violates an effluent limitation contained in waste discharge requirements applying to surface water discharges) beginning with the fourth violation in any six-month period.
6. The violations that occurred at the Facility beginning in August 2007 do not qualify for exemptions from MMPs under CWC Section 13385 (j)(1)(D). By letter dated September 17, 2008, SOCWA claimed the startup period for the facility lasted from June 2007 to February 2008, over 270 days. To qualify for this exemption, SOCWA and/or SCWD would have been required to meet all the requirements set forth in CWC section 13385(j)(1)(D)(i). No operations plan was submitted prior to or during the facility's start up mode. CWC section 13385(j)(1)(D) also states that this exemption shall not exceed 30-days for non-biological treatment facilities. The startup period identified in SOCWA's September 17, 2008 letter exceeds the 30-day time period.

7. The violations that occurred do not qualify for an exemption from MMPs under CWC section 13385(j)(~~32~~) because the waste discharge was not in compliance with any cease and desist order or time schedule order issued by the Regional Board. CWC section 13385 does not contain any exemption from MMPs, based solely on a discharger's plan to cease discharging wastewater that has pollutant concentrations in violation of effluent limitations, without first obtaining a time schedule order or cease and desist order from the Regional Board.
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 of ~~\$8,240~~\$9,320 to prosecute the enforcement action; the costs include investigation, preparation of enforcement documents, communicating with the Discharger and preparation of materials for public review and hearing.
10. CWC Section 13385(l) allows the Regional Board to direct a portion of MMPs toward implementation of Supplemental Environmental Projects (SEPs). On April 24, 2009, SOCWA proposed directing a portion of assessed penalties to a SEP titled "Bight '08 Rocky Reef Study," to be conducted by the Southern California Coastal Water Research Project . 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).

IT IS HEREBY ORDERED, pursuant to California Water Code section 13385(h) and 13385(i), that civil liability is imposed on South Orange County Wastewater Authority (SOCWA) in the amount of \$204,000.

1. SOCWA shall submit a check to the Regional Board in the amount of ~~\$204,000~~ \$94,500 payable to the "State Water Resources Control Board, Cleanup and Abatement Account" within 30 days of adoption of this Order.
2. SOCWA shall submit payment in the amount of \$109,500 to the Southern California Coastal Water Research Project (SCCWRP) to provide funding in support of the Supplemental Environmental Project (SEP) known as "Bight '08 Rocky Reef Study." SOCWA shall provide evidence to the Regional Board of payment in full to SCCWRP by **June 12, 2009**. 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.

3. SOCWA shall provide SEP progress reports to the Regional Board at the following schedule:

- a. Semi-annual reports by **September 1, 2009, March 1, 2010, September 1, 2010, and March 1, 2011** documenting the status of the Field Program, Special Studies, and assessment of the study objectives; and
- b. A final report by **March 1, 2012** certifying completion of the SEP.

4. If SOCWA 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.

2.5. Fulfillment of SOCWA's obligations under this Order constitutes full and final satisfaction of any and all liability for each allegation in Complaint No. R9-2009-0028.

3.6. The Executive Officer is authorized to refer this matter to the Office of the Attorney General for collection or other enforcement if SOCWA fails to comply with paragraphs 1 through 4.

I, John H. Robertus, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of an Order imposing civil liability by the California Regional Water Quality Control Board, San Diego Region, on May 13, 2009.

TENTATIVE

JOHN H. ROBERTUS
 Executive Officer

Attachment 1: Violations Subject to Mandatory Minimum Penalties

CIWQS Entries

Regulatory Measure ID: 360847 (ACL)

Related Reg Msr (NPDES): 309059

Place ID: 704670

Party ID: 41388

Violations: 660728, 689220, 689715, 689237, 689307, 689310, 689267, 689282, 698165, 715317, 715322, 715281, 754137, 724233, 724234, 724195, 724241, 755310, 755198, 755317, 805397, 805277, 805281, 805283, 805285, 805286, 805288, 805290, 805330, 805332, 805795, 805819, 805797, 805799, 805803, 805804, 805806, 805842, 805843, 805824, 805825, 805844, 805827, 805823, 805833, 805838, 805836, 805826, 805835, 805832, 805820, 805821, 805822, 805828, 805824, 805829, 805831, 805813, 805814, 805815, 805817, 805818, 805812, 805810, 805808, 805805, 805802, 805796, 805793.