

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

***Tentative* ORDER NO. R9-2011-0010**

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST
EASTERN MUNICIPAL WATER DISTRICT
TEMECULA VALLEY REGIONAL WATER RECLAMATION FACILITY
FOR
VIOLATIONS OF ORDER NO. R9-2000-0165
DISCHARGE OF SEWAGE INTO MURRIETA CREEK**

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) having held a public hearing on January 12, 2011, to hear evidence and comments on the allegations contained in Administrative Civil Liability Complaint R9-2010-0085, dated July 23, 2010, 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 \$524,800 finds as follows:

1. Eastern Municipal Water District (EMWD) owns and operates the Temecula Valley Regional Water Reclamation Facility (TVRWRF) located at 42565 Avenida Alvarado, Temecula, California.
2. EMWD is required to operate and maintain the TVRWRF in compliance with requirements of San Diego Water Board Order No. R9-2000-0165, *Waste Discharge Requirements for Eastern Municipal Water District Temecula Valley Regional Water Reclamation Facility Riverside County*, as amended.
3. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. San Diego Water Board Order No. R9-2000-0165 is not an NPDES permit.
4. Prohibition A.1 of Order No. R9-2000-0165 states “Discharges of waste to lands which have not been specifically described in the Report of Waste Discharge and for which valid waste discharge requirements are not in force are prohibited.”
5. Prohibition A.2 of Order No. R9-2000-0165 states “Neither the treatment, storage nor disposal of waste shall create a pollution, contamination or nuisance, as defined by section 13050 of the California Water Code.”

6. Prohibition A.3 of Order No. R9-2000-0165 states “Discharges of treated or untreated solid or liquid waste to a navigable water or tributary of a navigable water are prohibited unless authorized by a NPDES permit issued by the appropriate Regional Board.”
7. Prohibition A.4 of Order No. R9-2000-0165 states “The discharge shall not cause a violation of the prohibitions contained in the Basin Plan.”
8. On December 25 - 26, 2009, EMWD discharged approximately 1.6 million gallons of untreated raw sewage from the head works structure of the TVRWRF into Murrieta Creek, a water of the State of California and a navigable water of the United States, its tributary waters and land. In response to this event the San Diego Water Board issued Investigative Order No. R9-2010-0009 to the EMWD on February 1, 2010, alleging violations of Prohibitions A.1, A.2, A.3 and A.4 of Order No. R9-2000-0165. On July 23, 2010, after investigating the spill and reviewing the information submitted by EMWD, the San Diego Water Board issued Administrative Civil Liability Complaint No. R9-2010-0085 in the amount of \$1,035,310 to EMWD for violating Order No. R9-2000-0165, Federal Clean Water Act section 301, and Water Code section 13376.
9. On September 3, 2010 EMWD presented new evidence to the San Diego Water Board and requested that the original estimated sewage discharge of 2.39 million gallons be revised downward. The information provided by EMWD justifies a reduction in the estimated discharge volume to 1.6 million gallons.
10. 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.
11. Water Code section 13350 provides that any person who violates any waste discharge requirement issued by a Regional Water Board shall be civilly liable. Water Code section 13350(e)(2) provides that civil liability on a per gallon basis may not exceed \$10 for each gallon of waste discharged.

12. The amount of discretionary assessment proposed is based upon consideration of factors contained in Water Code section 13327. Section 13327 specifies the factors that the San Diego Water Board shall consider in establishing the amount of discretionary liability for the alleged violations, which include: the nature, circumstance, extent, and gravity of the violations, the ability to pay, the effect on ability to continue in business, prior history of violation, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
13. The penalty calculation methodology within section VI of the Water Quality Enforcement Policy supports the administrative assessment civil liability against the EMWD in the amount of \$524,800 for the discharge of untreated sewage to Murrieta Creek, its tributary waters and land, on December 25-26, 2009.
14. The San Diego Water Board incurred costs of \$10,000 to prosecute the enforcement action; the costs include investigation, preparation of enforcement documents, communicating with EMWD and preparation of materials for public review and hearing.

IT IS HEREBY ORDERED, pursuant to Water Code section 13350, that civil liability be imposed upon EMWD in the amount of \$524,800 for the discharge of untreated sewage to Murrieta Creek, its tributary waters and land, on December 25-26, 2009 in violation of Water Code section 13376.

1. EMWD shall submit a check to the San Diego Water Board in the amount of five hundred and twenty four thousand eight hundred dollars (\$524,800) payable to the "State Water Resources Control Board" for deposit into the Waste Discharge Permit Fund within thirty (30) days of adoption of this Order.
2. Fulfillment of the EMWD's obligations under this Order constitutes full and final satisfaction of any and all liability for each allegation in Complaint No. R9-2010-0085.
3. The Executive Officer is authorized to refer this matter to the Office of the Attorney General for collection or other enforcement if EMWD fails to comply with payment of the liability as detailed in paragraph 1.

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 January 12, 2011.

Tentative

DAVID W. GIBSON
Executive Officer

Place ID: 263145
Reg. Msr: 374160

Step 1: Potential Harm Factor				
Violations	Harm/Potential Harm to Beneficial Uses [0 - 5]	Physical, Chemical, Biological or Thermal Characteristics [0 - 4]	Susceptibility to Cleanup or Abatement [0 or 1]	Total Potential for Harm [0 - 10]
Sewage Spill	3	3	0	6

Step 2: Assessments for Discharge Violations						
Violations	Per Gallon Factor					Statutory or Policy Max per Gallon [\$]
	Potential for Harm [0 - 10]	Deviation from Requirement [minor, moderate, major]	High Volume Discharges [yes / no]	Gallons Discharged	Total Per Gallon Factor	
Sewage Spill	6	moderate	yes	1,600,000	0.15	\$2.00
Violations	Per Day Factor				Statutory Max per Day [section 13xxx]	
	Potential for Harm [0 - 10]	Deviation from Requirement [minor, moderate, major]	Total Per Day Factor	Days of Violation		
n/a	n/a	n/a	n/a	n/a	n/a	

Step 3: Per Day Assesments for Non-Discharge Violations					
Violations	Per Day Factor				Statutory/ Adjusted Max [section 13xxx]
	Potential for Harm [minor, moderate, major]	Deviation from Requirement [minor, moderate, major]	Total Per Day Factor	Days of Violation	
n/a	n/a	n/a	n/a	n/a	n/a

Initial Liability From Steps 1 - 3	
\$480,000.00	

Step 4: Adjustments					
Violations	Culpability [0.5 - 1.5]	Cleanup and Cooperation [0.75 - 1.5]	History of Violations	Multiple Violations (Same Incident)	Adjusted Days of Violation
Sewage Spill	1.3	0.75	1.1	yes	n/a

Step 5: Total Base Liability Amount
(Per day Factor x statutory maximum) x (Step 4 Adjustments)
\$514,800

Step 6: Ability to Pay / Continue in Business
[Yes, No, Partly, Unknown]
yes

Step 7: Other Factors as Justice May Require	
Costs of Investigation and Enforcement	Other
\$10,000	n/a

Step 8: Economic Benefit
\$24,654

Step 9: Maximum and Minimum Liability Amounts		
	Minimum	Maximum
Violation 1	\$27,199	\$16,000,000

Step 10: Final Liability Amount
(total base liability) + (other factors)
\$524,800