

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

IN THE MATTER OF:

**OSCAR MOLINA PEREYRA
LINDA MICHELLE PEREYRA
Individually, and d.b.a.
BULLDOG CONCRETE PUMPING**

**CONCRETE DISCHARGES TO
CHOLLAS CREEK
Place ID No. 713170**

**COMPLAINT NO. R9-2010-0082
FOR
ADMINISTRATIVE CIVIL LIABILITY**

**VIOLATIONS OF
CLEANUP AND ABATEMENT
ORDER NO. R9-2008-0036**

September 22, 2010

**OSCAR MOLINA PEREYRA, LINDA MICHELLE PEREYRA, AND BULLDOG
CONCRETE PUMPING ARE HEREBY GIVEN NOTICE THAT:**

1. Oscar Molina Pereyra and Linda Michelle Pereyra, individually and d.b.a. Bulldog Concrete Pumping (collectively referred to as “Dischargers”) have violated Cleanup and Abatement Order (CAO) No. R9-2008-0036 for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) may impose civil liability pursuant to Water Code section 13350(e)(1).
2. Dischargers are a concrete contractor that deliver, place, and finish concrete.
3. On August 21, 2008, the San Diego Water Board issued CAO No. R9-2008-0036 against the Dischargers for discharging uncured concrete into Chollas Creek.
4. CAO Directive No. 2 states that the Dischargers “[b]y January 7, 2009 cleanup and abate existing and threatened pollution associated with the unauthorized discharge of waste into Chollas Creek by:
 - a. Removing of 2,500 or more cubic yards of solidified concrete slurry from Chollas Creek and bank;
 - b. Including management measures for erosion control to prevent further conditions that threaten beneficial uses of Chollas Creek; and
 - c. Re-vegetating the restored creek with native vegetation along the banks in a manner to mimic the diversity and distribution of vegetation in Chollas Creek in the vicinity of the affected area.”

Figure 1 describes the pertinent CAO deadlines.

CAO Directive No.	Description	Due Date
1	Draft Creek Restoration and Monitoring Plan	10/17/2008
1	Final Creek Restoration and Monitoring Plan	11/21/2008
2	Cleanup and Abate Existing and Threatened Conditions of Pollution Associated with Discharge	01/07/2009
5	Draft Cleanup and Abatement Progress Report	01/31/2009
6	Draft Monitoring Report	10/15/2009
7	Final Chollas Creek Restoration Report	11/12/2009

Figure 1. Summary of Pertinent CAO Requirements.

5. On July 26, 2010, the San Diego Water Board in a certified return receipt letter invited the Dischargers to meet and discuss the facts regarding the alleged violations in an effort to settle the matter. The San Diego Water Board has not received communication from the Dischargers.
6. This Administrative Civil Liability Complaint is issued under authority of Water Code section 13323.
7. Status of Compliance with CAO No. R9-2008-0036
The Dischargers illegally discharged concrete into Chollas Creek, failed to cleanup the concrete and restore the creek, and they also failed to submit reports required under the CAO. San Diego Water Board Prosecution staff is not recommending that liability be assessed for the concrete discharges and the reporting violations because the top priority is removal of the discharged concrete and the restoration of Chollas Creek. While penalties may be assessed for the discharge and reporting violations, Prosecution staff find that the City of San Diego's criminal prosecution of Mr. Pereyra for the concrete discharges and the penalties sought in this complaint for the failure to cleanup and restore the creek to be sufficient to address these violations, deter similar conduct in the future, and promote the overlapping regulatory schemes of the enforcing agencies.

ALLEGATIONS SUBJECT TO THIS COMPLAINT

8. Dischargers Failed to Cleanup and Abate Existing and Threatened Pollution
The Dischargers violated CAO Directive No. 2 on January 8, 2009, when they failed to cleanup and abate existing and threatened pollution associated with the unauthorized discharge of waste into Chollas Creek. The violation continues; therefore the days of violation are 622 (January 8, 2009 to September 22, 2010) and counting.

MAXIMUM AND MINIMUM CIVIL LIABILITY

9. Pursuant to Water Code section 13350(e)(1), the maximum civil liability that the San Diego Water Board may impose for a violation of a Cleanup and Abatement Order is \$5,000 for each day the violation occurs. Pursuant to Water Code section 13350(e)(1)(B), the minimum civil liability that the San Diego Water Board may issue is \$100 for each day the violation occurs. The maximum and minimum liability that may be imposed by the San Diego Water Board for the violation of CAO Directive No. 2 is summarized in Figure 2.

Alleged Violation	Days of Violation	Civil Liability	
		Minimum	Maximum
Failure to Cleanup and Abate Existing & Threatened Pollution	622	\$62,200	\$3.11 million

Figure 2. Maximum and Minimum Civil Liability Amounts.

PROPOSED CIVIL LIABILITY

10. The amount of discretionary assessment proposed is based upon consideration of factors described in Water Code section 13327 as applied to the violation and described further in the technical analysis.
11. Based on the penalty calculation methodology within Section VI of the Water Quality Enforcement Policy, civil liability should be imposed on the Dischargers by the San Diego Water Board as detailed in Figure 3. The proposed civil liability will permit the recovery of costs incurred by San Diego Water Board staff in investigating the claims and in pursuing this enforcement action.

Alleged Violation	Adjusted Days of Violation	Liability Per Adjusted Day	Liability
Failure to Cleanup and Abate Existing & Threatened Pollution	26	\$12,375 ¹	\$321,750
Other Factors as Justice May Require		Hours	
San Diego Water Board Staff Costs		47	\$7,341
		Total	\$329,091

Figure 3. Liability Per Enforcement Policy Methodology.


¹ The liability per adjusted day does not exceed Water Code section 13350(e)(1)'s \$5,000 per day maximum because the liability shown is based upon the adjusted days of violation determined pursuant to the Enforcement Policy and described in Figure 5 of the Technical Analysis to Complaint No. R9-2010-0082. Comparing the liability amount of \$321,750 to Figure 2 reveals that the recommended liability amount is within the minimum (\$62,200) and maximum (\$3.11 million) liability range for that violation.

Oscar Molina Pereyra
Linda Michelle Pereyra
Bulldog Concrete Pumping
ACL Complaint R9-2010-0082

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Dated this 22nd day of September 2010.



JAMES G. SMITH
Assistant Executive Officer

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

CIWQS
Place ID: 713170
Party ID: 458970
Person ID: 458975
Reg. Measure ID: 373882