

## San Diego Regional Water Quality Control Board

August 19, 2016

San Diego Unified Port District  
Ms. Karen Holman  
P.O. Box 120488  
San Diego, CA 92112  
[kholman@portofsandiego.org](mailto:kholman@portofsandiego.org)

**In reply/refer to:**  
R9-2013-0001:214387:KMCathcart

**Subject: Water Code Section 13267 Request for Technical Report on Population Data,  
San Diego United Port District**

Ms. Holman:

A Technical Report (Report) is requested from the San Diego Unified Port District (Port) pursuant to Water Code section 13267<sup>1</sup> by 5:00 p.m. October 1, 2016. This Report is necessary for the San Diego Water Board to determine the "average daily population"<sup>2</sup> using the Port's facilities for purposes of determining compliance with the payment of annual fees required by Water Code section 13260(d)(1)(A). The Port's payment of annual fees is required as a co-permittee under the Regional Municipal Separate Storm Sewer System (MS4) Permit R9-2013-0001, NPDES No. CAS0109266, and are established by title 23, Cal. Code Regs., section 2200 (b)(1)(A) (Fee Regulations). The burden and cost of the requested Report bears a reasonable relationship to the need for the Report and the benefit to be obtained from the information it will provide to determine the Port's compliance with payment of annual fees.

### Information Required in Report Due October 1, 2016

The Report, required by October 1, 2016, shall include the following information for the period July 1, 2014 through June 30, 2016:

1. All visitor and use studies prepared by the Port, on behalf of the Port, or used by the Port, that provide population numbers on the users of Port facilities.
2. Daily population data on personnel employed by the Port, and organizations leasing Port facilities, commuting to those Port facilities for employment related work at the:

<sup>1</sup> Water Code section 13267, subparagraphs (a) & (b), allow the San Diego Water Board to investigate actions relating to the requirement to pay annual fees established according to the fee schedule under Water Code section 13260 by entities discharging waste that affect the quality of the waters of the State.

<sup>2</sup> The 2015-2016 Fee Schedule Regulations, 23 Cal. Code Regs., section 2200 (b)(1)(A), footnote 16, provides that "[t]otal daily population must include resident and commuter populations."

- a. 28<sup>th</sup> Street Marine Terminal;
  - b. 10<sup>th</sup> Avenue Marine Terminal;
  - c. marinas, yacht clubs, commercial and retail facility operators and hotels; and
  - d. Port operations, facilities, and administration buildings.
3. Annual membership population at yacht clubs leasing facilities or real estate from the Port.
  4. Annual occupancy rate of marina slips, moorings, and commercial harbor wharves broken down by location name or area.
  5. Annual cruise ship terminal passenger population numbers broken down by ship and date(s) docked.
  6. List of Port sponsored, or Port co-hosted, events, parades, and shows, held in or viewed from Port public parks and recreation areas, and the estimated population attendance at each event or show, to include the 4<sup>th</sup> of July Big Bay Boom, the Annual Christmas Parade of Lights, Flix by the Bay, etc.
  7. List of Port Park Permits issued for groups of 25 persons or more, the date(s) and the estimated population numbers at each event for which a permit was issued.

#### Evidence Supporting the Requirement for the Report

The San Diego Water Board has included the following information to support its determination that this Report is required:

1. The San Diego Water Board has recorded population data on the San Diego Unified Port District since it was a discharger under R9-1990-0042 (the San Diego Municipal Storm Water Permit). Based on San Diego Water Board records, the population data for the Port was entered as 1220 as the average daily population on July 21, 1990, and has remained at that number following the renewal of subsequent NPDES Phase 1 permits in 2001 (R9-2001-0001), 2007 (R9-2007-0001), and 2013 (R9-2013-0001).
2. The 1220 average daily population figure recorded by the San Diego Water Board places the Port in the category of population between 1000 and 9,999, the second lowest category in the Fee Schedule for fiscal years 2012-13, 2013-14, 2014-15, and 2015-16.<sup>3</sup>
3. The 1220 average daily population figure, multiplied by 365 days, equates to a total annual figure of 445,300 persons using Port facilities. Published figures on estimated attendance at the Port of San Diego Big Bay Boom July 4, 2016 alone, was 300,000-500,000 people.<sup>4</sup> Inclusion of population data required by this Report on other events, daily commuter employed population, and cruise ship passenger numbers will update

<sup>3</sup> Fiscal year 2012-13, 23 Cal. Code Regs., §2200(b)(1); fiscal year 2013-14, 23 Cal. Code Regs., §2200(b)(1)(A); fiscal year 2014-15, 23 Cal. Code Regs., §2200(b)(1)(A); fiscal year 2015-16, 23 Cal. Code Regs., §2200(b)(1)(A).

<sup>4</sup> <http://www.bigbayboom.com/donate/about-the-fireworks-show/>

and potentially increase the average daily population number to an accurate count of population as required by the Fee Regulations.<sup>2</sup>

4. The San Diego Water Board contacted the Port in December 2013 via phone, followed by email, to inquire about updating the population data and requested population information be submitted in early 2014. A copy of the email is attached. In August 2014, the Port was again contacted by phone to request an update on the population data. A representative of the Port indicated she would have a discussion with legal and requested further transparency on the type of Port facilities at which population data should be included. The San Diego Water Board advised that the Port should propose what type of population numbers they considered appropriate in relation to the users of Port facilities.
5. In October 2015, the Fee Regulations were updated to include clarifying information on what the "average daily population" using the Port's facilities should include.<sup>2</sup> No comment was received on the change to the Fee Regulations and no proposal has been received from the Port in response to this change.

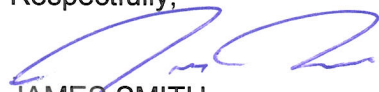
Information and documents supplied with the Report shall include a statement by the Port, or an authorized representative of the Port, certifying that the information submitted is true, complete, and accurate and signed under penalty of perjury in conformance with the laws of the State of California.

The failure to furnish any of the required reports, or the submittal of substantially incomplete reports or false information, is a misdemeanor, which may result in additional enforcement actions being taken against the Port. This includes issuance of an Administrative Civil Liability (ACL) Complaint pursuant to Water Code section 13268. Liability may be imposed pursuant to Water Code section 13268 in an amount not to exceed one thousand dollars (\$1,000) for each day in which a violation occurs.

Please format any written correspondence in response to this letter as an electronic document(s) and submit it to [SanDiego@waterboards.ca.gov](mailto:SanDiego@waterboards.ca.gov). The electronic document(s) may be submitted as multiple files in Excel (where appropriate) and Portable Document Format (PDF) format, and where submitted as PDF files, converted to text searchable format using Optical Character Recognition (OCR). The electronic document(s) must also include scanned copies of all signature pages; electronic signatures will not be accepted. Electronic documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: PIN: CW-255177:KMCathcart.

For questions pertaining to the subject matter, please contact Laurie Walsh at [Laurie.Walsh@waterboards.ca.gov](mailto:Laurie.Walsh@waterboards.ca.gov) or Kimberly McMurray-Cathcart [Kimberly.McMurray-Cathcart@waterboards.ca.gov](mailto:Kimberly.McMurray-Cathcart@waterboards.ca.gov).

Respectfully,



JAMES SMITH  
Assistant Executive Officer

JS:dtb:law:kmc

Enclosure: Email 18 December 2013 KMC to KHolman

**Tech Staff Info & Use**

PIN	CW-255177
WDID	9 0000510S2
CIWQS	214387

2. In October 2015, the San Diego Water Board requested that the San Diego Unified Port District (SDUPD) provide a copy of the email attached in August 2014. The SDUPD provided a copy of the email to the Board in early 2015. A copy of the email is attached in August 2015. The SDUPD provided a copy of the email to the Board in early 2015. A copy of the email is attached in August 2015.

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Respectfully,  
  
JAMES SMITH  
Executive Director

## McMurray-Cathcart, Kimberly@Waterboards

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**From:** McMurray-Cathcart, Kimberly@Waterboards  
**Sent:** Tuesday, December 17, 2013 4:05 PM  
**To:** 'kholman@portofsandiego.org'  
**Cc:** jhabib@portofsandiego.org  
**Subject:** San Diego Unified Port District - Copermittee San Diego Muni Storm Water Permit- RM 214387; WDID 9 0000510S2

Hi Karen,

Good speaking with you today.

As indicated, we are updating our records on the population data for the Port of San Diego.

The average daily population using the Port of San Diego's facilities is entered in our database as 1220.

The base fee for the MS4 permit, referred to in the subject line, is calculated on this population number for this fiscal year (1 July 13 to 30 June 2014).

As discussed, the current language in the fee regulations regarding population for public entities is: "For public entities other than cities or counties (Non-Traditional Small MS4s) shall pay an annual fee according to the following schedule, plus applicable surcharge(s), based on the **average daily population using the entities facilities.**" 23 C.C.R §2200(b)(1)(A).

The base fee for the San Diego Unified Port District is for this fiscal year is \$5,285.00 (based on average daily users between 1,000 and 9,999) and the surcharge is 9.5% of the base fee (\$1,110.00).

The link to the 2013-14 Fee Schedules/regulations containing the fee categories and language referred to above can be found on the waterboards website

at: [http://www.waterboards.ca.gov/resources/fees/docs/fy13\\_14\\_fee\\_schedule\\_npdes\\_sw.pdf](http://www.waterboards.ca.gov/resources/fees/docs/fy13_14_fee_schedule_npdes_sw.pdf).

We would be grateful if you would initiate a review of the average daily population using the Port of San Diego's facilities so we can ensure that our database is accurate.

The average daily population using the Port of San Diego's facilities (such as marine terminals, marinas etc.) can be calculated by dividing the total annual population by 365 to arrive at the average daily population figure.

I have copied Joley Habib on this email to keep her informed as the "average daily population" figure may change and this may have the effect of generating a supplemental invoice for this fiscal year if the fee category changes.

We recognize that the impending holiday season may prevent the Port from compiling this data until, at the earliest, the New Year, unless it is readily available.


We appreciate your assistance and encourage you to call if we can address any questions or concerns.

Best regards,  
Kimberly

KA McMurray-Cathcart  
Associate Government Program Analyst  
San Diego Regional Water Quality Control Board  
***The San Diego Regional Water Quality Control Board has moved!***  
***Our new address and phone numbers are:***  
*2375 Northside Drive, Suite 100*  
*San Diego, CA 92108*

Main Number: 619 516 1990

Direct Dial: 619 521 3919

 CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
**SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD**  
[www.waterboards.ca.gov/sandiego/](http://www.waterboards.ca.gov/sandiego/)