

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

ORDER WQ 2001 - 02

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In the Matter of the Petition of the

**CITY OF LOS ANGELES**

For Review of Assessment of Administrative Civil Liability,

Order No. 99-102

Issued by the

California Regional Water Quality Control Board,  
Los Angeles Region

***SWRCB/OCC FILE A-1295***

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BY THE BOARD:

The City of Los Angeles (City) filed a timely petition for review of an order assessing administrative civil liability in the amount of \$125,397.00. This order, issued by the Los Angeles Regional Water Quality Control Board (Regional Water Board), addressed the City's September 6, 1999 release of secondary treated sewage effluent through a reclaimed water distribution system. As a result of malfunctions in a pump station jointly owned by the City and the City of Glendale, between 1.4 and 1.9 million gallons of effluent were released into the distribution system that provides reclaimed wastewater for Griffith Park, for cemetery irrigation, and for use in other area parks. Some undetermined portion of that wastewater was actually used on such facilities; the remainder stayed in the distribution system and was recovered.

~~The Regional Water Board issued a complaint for administrative civil liability~~ based on the 1.4 million gallon figure assessing \$10,000 for one day of violation, \$41,997 for 1,399,900 gallons of discharge (at 3¢ per gallon), \$65,000 for cost savings, and \$8,400 in staff costs. This is considerably less than the maximum potential assessment of \$14,000,000, as

determined by Regional Water Board staff. After a hearing at which staff, the City, and other interested parties made presentations, the Regional Water Board affirmed the assessment in the amount recommended in the complaint.

## I. BACKGROUND

The City, through its Department of Water and Power, owns and operates (along with the City of Glendale) the Los Angeles-Glendale Water Reclamation Plant (Plant). The Plant is operated subject to two permits issued by the Regional Water Board. An NPDES permit, issued as waste discharge requirements Order No. 98-047, regulates the discharge of treated wastewater from the Plant to the Los Angeles River. Reclamation requirements, issued as Order No. 97-072, regulate the distribution of reclaimed water from the Plant to Griffith Park for general irrigation use (including the golf courses), for fire fighting, and for various impoundments in the park. Water not needed for Griffith Park is sold by the City for industrial cooling, for cemetery irrigation, and for irrigation of other parks. In addition, there are several customers in Glendale.

The Plant was retrofitted so that it can be operated without human attendants during some portion of each day. It was during such a time on September 5, 1999 at 10:57 p.m. that a malfunction in the automatic control system that operates the filter pumps occurred. After the control system problem occurred, the personnel notification system failed. This means that secondary treated effluent flowed where it should not have and no operator was notified that it was happening. The flow continued uninterrupted for nearly 6 hours between about 1:00 a.m. and 6:50 a.m. on September 6, 1999. Staff was able to shut down the system the following morning and to notify most customers. Glendale customers were not notified for another 24 hours. In the meanwhile, some of the effluent was discharged onto various irrigated areas.

## II. CONTENTIONS AND FINDINGS

Contention: The City contends that the Regional Water Board has relied on the wrong statute to assess administrative civil liability.

Finding: The City is correct in part. The Regional Water Board has based its order on violation of Water Code section 13376. That section deals with the issuance of NPDES permits and requires any person proposing to discharge pollutants into navigable waters or to operate a sewage treatment plant to obtain such a permit. Section 13385 then imposes liability for violation of section 13376. Liability can be assessed for violation of the permit in the amount of \$10,000 per day. Water Code § 13385(c)(1). In addition, an assessment of up to \$10 may be imposed for each gallon (after the first 1,000 gallons) discharged to navigable waters. There is evidence in the record that the City failed to operate the Plant according to the terms of the NPDES permit. Thus, an assessment of up to \$10,000 per day could be ordered pursuant to section 13385(c)(2). However, there is no evidence in the record that any discharge occurred to a navigable water body. Thus, it was inappropriate to use section 13385(c)(2) to assess civil liability based on the volume of the discharge.

Rather the distribution of secondary treated wastewater to parks, golf courses, and other customers was clearly a violation of the reclamation requirements issued by the Regional Water Board. Such violations may be addressed using section 13350(e) of the Water Code. Section 13350 addresses discharges and other violations that do not affect navigable waters. An assessment of up to \$10 for each gallon of waste discharged may be imposed. However, any assessment pursuant to section 13350 for violation of a permit must include findings that the discharge was the result of intentional or negligent conduct, that it was deposited where it was discharged into waters of the state, and that it caused a condition of pollution or nuisance. While

the record may support a conclusion that pollution or nuisance resulted from the City's discharge but is silent on the question of intent or negligence, there is no indication in the record concerning whether the discharge affected waters of the state. If the Regional Water Board can determine that the discharge resulted from intentional or negligent conduct and that the waste was deposited where it was discharged into waters of the state, an additional assessment for the gallons of effluent distributed would be appropriate.

Based on the evidence in the record, an administrative civil liability assessment of \$10,000 for one day of violation of the NPDES permit is fully justified. In addition, if the Regional Water Board concludes that the malfunction of the Plant resulted in the deposit of waste where it was discharged to waters of the state and constituted or was the result of negligence or intent on the part of the City, an additional assessment of up to \$10 per gallon could be imposed pursuant to section 13350(e).

Contention: The City argues that the Regional Water Board improperly applied the aggravating and mitigating factors in determining that the City saved \$40,000 by not having an operator on site.

Finding: The City's point is well taken. A plant intended to be run without an operator has malfunctioned. Clearly, the City probably saved money by not taking the necessary steps to prevent such a malfunction. That may represent the cost saved by using a less expensive computer system, the savings of doing less maintenance than is appropriate, or any of a number of other factors. The cost of placing an attendant at an unattended plant is not necessarily the true measure of the cost savings. It could well be that any actual cost savings exceeded the

expense of putting a human being at the plant; it could as easily be much less. The Regional Water Board should calculate the savings, if any, on that basis.<sup>1</sup>

### III. CONCLUSION

It is generally the case that the State Water Resources Control Board (State Water Board) will not review the decision of a regional board with regard to the issuance of an order assessing administrative civil liability. However, when it appears that the decision involves the misapplication of law, the State Water Board will not forego such review. This petition raises such issues.

The Regional Water Board properly found that the City violated the terms of its NPDES permit. However, the Regional Water Board improperly applied that finding to the amount of the assessment. Based on the record, no more than \$10,000 could have been assessed for violations of section 13376 of the Water Code. Additional assessments may be appropriate under Water Code section 13350(e) if the Regional Water Board finds that the waste was deposited where it was discharged into waters of the state and that intentional or negligent conduct caused the discharge of the secondary treated wastewater from the Plant. Moreover, there may be other provisions of the Water Code under which an appropriate assessment may be established given the facts of this case.

In determining how much to assess, the Regional Water Board used an improper method of determining cost savings. The Regional Water Board should reconsider the issue in light of the discussion above.

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<sup>1</sup> Other contentions of the City will not be addressed in light of the decision reached.

IV. ORDER

IT IS HEREBY ORDERED THAT the matter is remanded to the Regional Water Board for further findings and proceedings consistent with this order.

CERTIFICATION

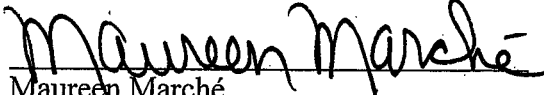
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 15, 2001.

AYE: Arthur G. Baggett, Jr.  
Mary Jane Forster  
John W. Brown  
Peter S. Silva

NO: None

ABSENT: None

ABSTAIN: None

  
Maureen Marché  
Administrative Assistant to the Board