

EXECUTIVE OFFICER SUMMARY REPORT
June 14, 2006

- ITEM: 13
- SUBJECT: PUBLIC HEARING: Administrative Assessment of Civil Liability against the City of Carlsbad for violations of Order No. 99-08-DWQ, Statewide General Construction Storm Water Permit, at the Municipal Golf Course project at 5800 Hidden Valley Road, Carlsbad, California, WDID No. 9 37C337203 (See Document No. 1, Site Map). (Tentative ACL Order No. R9-2006-0009, Document No. 2) (Frank Melbourne)
- PURPOSE: The Regional Board will accept testimony from the public, the City of Carlsbad, and Regional Board staff regarding the allegations of violation and recommendation of civil liability contained in ACL Complaint No. R9-2005-0264 (Document No. 3) in deciding whether to assess civil liability against the City of Carlsbad.
- PUBLIC NOTICE: On April 22, 2006, a 30-day public comment period was noticed in the San Diego Union newspaper, as well as on the Regional Board's Web Page. The Regional Board has received three e-mail comments on the matter (Document Nos. 4-6).
- DISCUSSION: Payment of the \$23,900 liability along with the City's assurances that they will make every effort to comply with the Construction Storm Water Permit is sufficient resolution of the matter before the Regional Board today.
- Chronology: The Regional Board was informed in a newspaper article that the City of Carlsbad had initiated construction of its municipal golf course. On October 14, 2005, Regional Board Inspector Eric Becker of the Regional Board's Northern Watershed Unit inspected the 400-acre site. Mr. Becker noted the inadequacy of sediment and erosion control measures, collectively known as Best Management Practices (BMPs) at the site, and upon consultation with City staff, learned that the City failed to submit a Notice of Intent (NOI) for coverage under the State Water Resources Control Board's General Construction Storm Water Permit, Order No. 99-08-DWQ.

On October 17, 2005 the City hand delivered a NOI to the State Board in Sacramento (WDID No. 937C337203). Mr. Becker conducted a follow-up inspection on October 18, 2005 where he noted the continued inadequacy of site BMPs.

Subsequently, the Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R9-2005-0264 against the City on October 20, 2005. The \$23,900 Complaint alleged that the City: 1) failed to file a NOI for 39 days and 2) installed inadequate BMPs for 20 days. The maximum liability the City faced for each violation was \$10,000 per day per violation, or a total maximum liability of \$590,000. The Complaint recommended a total liability of \$23,900, which included \$3,900 for failing to file a NOI and \$20,000 for failing to implement adequate BMPs. The Technical Analysis for the Complaint (Document No. 7) fully describes the allegations and reviews the required factors of Water Code section 13385 to support the recommended liability.

On October 28, 2005, the Regional Board reinspected the site and determined that the City had taken significant steps towards achieving compliance. On November 18, 2005, the City of Carlsbad waived its right to a public hearing, and tendered a check for \$23,900 (Document No. 8). The Regional Board on December 14, 2005 rejected the City's settlement offer and the matter was scheduled for a public hearing. Due to requests by the City, the matter could not be rescheduled for a hearing until the June 2006 Regional Board meeting.

During the delay, the Regional Board documented continued compliance with the General Construction Storm Water Permit during subsequent inspections on January 3, 2006 and April 10, 2006 (Document No. 9). On May 22, 2006, the Regional Board inspected the site after a high intensity storm event. Although the site appeared to generally be in compliance, the Regional Board did document a sediment discharge from one building pad that was a part of the site (Document No. 10). The specifics of the latest incident, however, should not be considered in determining liability today because Complaint No. R9-2005-0264 did not allege a discharge of sediment. To consider an allegation of sediment discharge, the Regional Board would need to issue an ACL complaint alleging the violation, and provide at minimum 30 days public notice. Furthermore, the Regional Board has not concluded its investigation of the incident; therefore, issuance of an ACL complaint at this stage is premature. However, the Regional Board may consider all information related to the City's efforts to comply with the Construction Storm Water Permit including the May 22,

2006 incident in order to develop an overall characterization of the City's efforts in determining an appropriate enforcement response for ACL Complaint No. R9-2005-0264.

On May 26, 2006, the City submitted a response to the Regional Board (Document No. 11).

KEY ISSUE: Is \$23,900 sufficient liability for the alleged violations?

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Site Map
2. Tentative Order No. R9-2006-0009
3. ACL Complaint No. R9-2005-0264
4. Kay E-mail
5. Nygaard E-mail
6. Mester E-mail
7. Technical Analysis for ACL Complaint No. R9-2005-0264
8. City of Carlsbad's signed waiver and check
9. Regional Board Inspection Report, April 10, 2006
10. Regional Board Inspection Report, May 22, 2006
11. City of Carlsbad Submittal

RECOMMENDATION(S): Adopt Tentative Order No. R9-2006-0009