

State of California  
Regional Water Quality Control Board  
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT  
October 12, 2011

- ITEM: 8
- SUBJECT: Public Hearing: Administrative Assessment of Civil Liability, Mr. Jack Eitzen, 38175 Via Vista Grande, Murrieta, CA. The San Diego Water Board will consider adoption of a Tentative Order that would impose \$381,450 for violations of Basin Plan Prohibitions 1 & 14 and Order No. 99-08-DWQ (Tentative Order No. R9-2011-0048). (*Christina Arias*)
- PURPOSE: The San Diego Water Board will conduct a public hearing and consider adoption of Tentative Administrative Civil Liability (ACL) Order No. R9-2011-0048 (Supporting Document No. 1). Tentative Order No. R9-2011-0048 would impose a civil liability identified in Complaint No. R9-2010-0084 (Supporting Document No. 2). The San Diego Water Board may approve, modify, or reject assessment of the recommended liability.
- PUBLIC NOTICE: Notice of the San Diego Water Board's consideration of the Tentative ACL Order was originally posted on the San Diego Water Board's website and distributed to the Agenda mailing list on September 30, 2010, and re-noticed on July 21, 2011.
- DISCUSSION: On December 21, 2005, Mr. Jack Eitzen, owner of Eitzen Construction, filed a Notice of Intent (NOI) for coverage of construction activities conducted at 38175 Via Vista Grande, Murrieta, California, pursuant to the requirements of Order No. 99-08-DWQ (Construction General Permit). At the time, Mr. Eitzen was the owner and general contractor of this property. A location map of the site is provided as Supporting Document No. 3.
- From October 2007 through December 2008, the County of Riverside (County) issued several citations and a Stop Work Order to Mr. Eitzen for Storm Water Pollution Prevention Plan (SWPPP) and Best Management Practice (BMP) violations at this construction site. Because the County was unsuccessful in achieving compliance at this site, in December, 2008, the County requested assistance from the San Diego Water Board. On December 16, 2008, and December 23, 2008, the San Diego Water Board conducted a joint construction inspection with the County. The San Diego Water Board inspectors noted

numerous violations of both Order No. 99-08-DWQ, and the Basin Plan Discharge Prohibitions. The Facility Inspection Reports associated with these construction site inspections are provided as Exhibits 2 and 9, Supporting Document No. 2.

As a result of inspection findings, on March 24, 2010, the San Diego Water Board's Assistant Executive Officer issued Notice of Violation No. R9-2010-0059 to Mr. Eitzen for, among other items, multiple violations of Order No. 99-08-DWQ and violations of Basin Plan Discharge Prohibitions (Exhibit 10, Supporting Document No. 2). On September 28, 2010, the San Diego Water Board's Assistant Executive Officer issued ACL Complaint No. R9-2010-0084 to Mr. Eitzen for violations of Basin Plan Waste Discharge Prohibition Nos. 1 and 14, violations of Discharge Prohibition A.2 of Order No. 99-08-DWQ, and failure to develop and implement an adequate SWPPP. The penalty proposed in the Complaint was calculated using the 2009 State Board Water Quality Enforcement Policy (Enforcement Policy) penalty calculation methodology. The final liability recommended by the Prosecution Team, which includes recovery of staff costs as of September 28, 2010, is \$381,450.

#### Submission of Evidence

Pursuant to the hearing procedures distributed with the ACL Complaint, the Prosecution Team and Mr. Eitzen submitted Evidence and Policy Statements on February 1, 2011 and April 18, 2011, respectively (Supporting Documents Nos. 4 and 5).

Mr. Eitzen contests the adjustment factors used to calculate the liability amount, and also contests his ability to pay the full liability amount. To support his claim, on April 7, 2011, Mr. Eitzen provided the San Diego Water Board a Statement of Worth (Supporting Document No. 6). Subsequently, the Prosecution Team issued a subpoena on May 5, 2011 (Supporting Document No. 7) for supporting documentation for the Statement of Worth in order to produce a rebuttal to Mr. Eitzen's evidence and argument of inability to pay. On June 16, 2011, Mr. Eitzen submitted additional evidence in response to the subpoena (Supporting Document No. 8).

On July 29, 2011, the Prosecution Team submitted rebuttal evidence (Supporting Document No. 9).

#### Assessment of Civil Liability

According to the Water Code and Enforcement Policy, the total maximum liability for these violations is \$4,745,000 and the minimum liability amount the San Diego Water Board should assess is \$55,729. The recommended amount of discretionary

assessment is based upon consideration of factors contained in Water Code section 13327, which include: the nature, circumstance, extent, and gravity of the violations, whether the discharge is subject to cleanup or abatement, the degree of toxicity of the discharge, and with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, 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. These factors are applied to the penalty calculation methodology contained in section VI of the Enforcement Policy and discussed in the Technical Analysis.

LEGAL CONCERNS: NONE

KEY ISSUES:

1. Mr. Eitzen is challenging the proposed penalty. Specifically, Mr. Eitzen asserts less liability should be imposed for potential harm, culpability, and deviation from the requirement than recommended in the Tentative Order.
2. This Tentative Order is related to, but separate from, Tentative Order No. R9-2011-0049. Tentative Order No. R9-2011-0049 is likewise an ACL issued to Mr. Jack Eitzen for violations of Order No. 99-09-DWQ. Tentative Order No. R9-2011-0049 was issued separately to Mr. Eitzen because the violations therein, although similar in nature, pertained to construction work at a different parcel number.

SUPPORTING DOCUMENTS:

1. Tentative ACL Order No. R9-2011-0048 with Exhibit No. 1
2. ACL Complaint No. R9-2010-0084 with Technical Analysis
3. Location Map
4. Prosecution Team's Evidence and Policy Statements
5. Mr. Eitzen's Evidence and Policy Statements
6. Mr. Jack Eitzen Statement of Worth
7. Subpoena Duces Tecum
8. Evidence Submitted in Response to Subpoena
9. Prosecution Team's Rebuttal Evidence

RECOMMENDATION: Recommendations from the Advisory and Prosecution staff teams will be provided at the hearing.