From: Bruce Wolfe
To: Keith Lichten; Nicholas.Targ@hklaw.com
CC: Dorothy Dickey ; Dyan Whyte; Laura Drabandt; Laurie Taul; Thomas Mum...
Date: 6/15/2010 5:55 PM
Subject: OG Property Owner, LLC -- Settlement Agreement and Final Order
Attachments: OG Property Owner Final Order - 6-10.pdf

To designated and interested parties:

I have signed the attached Order No. R2-2010-0085, which enforces the settlement agreement and stipulation for order executed between the Regional Water Board's Prosecution Team and OG Property Owner, LLC (OG). As such, OG is required to pay $530,000 in civil liability to the State Water Board's Cleanup and Abatement Account by July 15, 2010.

During the public comment period on this order, I received and reviewed five comment letters. The primary comment made in these letters was that the order should have mandated that OG implement a supplemental environmental project (SEP) to satisfy a portion of its obligation to pay a civil liability. Additionally, some of the comment letters provided specifics on potential SEPs. I understand from the comment letters and the designated parties that attempts have been made to identify a SEP that would both satisfy the Enforcement Policy and be effectively implemented. However, the designated parties were unable to identify and reach agreement on such a SEP during their settlement negotiations.

While it has always been the position of this Regional Water Board that SEPs are an appropriate means for dischargers to satisfy a portion of their obligations to pay administrative civil liability, there is nothing in the Enforcement Policy nor the Water Code that would allow the Board to require their use. Thus, since the designated parties have already considered including a SEP in their settlement agreement and draft order but failed to do, I do not find any water quality benefit in revisiting this issue during a public hearing conducted by the Regional Water Board when such a hearing is unlikely to result in the inclusion of a SEP in any order the Board would adopt. However, I would like the Prosecution Team to maintain copies of the comment letters so that it may consider including some or all of the components of the SEPs described in future settlement agreements.

One commenter did note that the draft order provided little rationale for the reduction of civil liability from the $982,350 in the original complaint to the $530,000 in the draft order. I agree that the order's findings could have provided more detail on this, but do not see that addressing this issue during a public hearing would result in any material change to the amount of the civil liability reached during settlement negotiations.

In sum, I do not feel that the comment letters raise issues that need to be addressed during a public hearing conducted by the Regional Water Board. As such, I have signed the order as originally circulated for public comment.

I would like the Prosecution Team to see that the attached order is posted on the Board's website and is transmitted to all parties.

Bruce H. Wolfe, Executive Officer
SF Bay Regional Water Board
1515 Clay St., Suite 1400
Oakland, CA 94612

510-622-2314 / 510-622-2457 - fax