

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF JULY 10, 2009

Prepared on June 19, 2009

ITEM NUMBER: 10

SUBJECT: Referral to California Attorney General's Office, Resolution No. R3-2009-0054, Greka Oil & Gas, Inc., Santa Barbara County

KEY INFORMATION

Discharger: Greka Oil & Gas, Inc.
Location: Santa Barbara County
Discharge Type: Unauthorized discharges of crude oil, produced water, and residuary products of petroleum
Existing Order: N/A
This Action: **Consider Referral to Attorney General's Office**

DISCUSSION

Introduction:

The prosecution staff of the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) recommends that the Central Coast Water Board approve Resolution No. R3-2009-0054 requesting that the California Attorney General petition the superior court to impose, assess and recover monetary civil liability, and seek appropriate injunctive and declaratory relief, from Greka Oil & Gas, Inc. ("Greka") in accordance with California Water Code ("CWC") sections 13350, 13385, and other applicable law. For more than ten years, Greka has owned, leased and operated oil production facilities in, among other areas of the Central Coast Region and Santa Barbara County, the Casmalia, Cat Canyon, Santa Maria Valley and Zaca Oilfields. Greka's facilities include oil wells, pipelines, and separation and storage facilities.

CWC sections 13350 and 13385 specify civil liabilities for certain violations. These civil liabilities may be imposed administratively by a Regional Water Board or judicially by the superior court. CWC 13350(g) states, in relevant part:

The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose, assess, and recover such sums. Except in the case of a violation of a cease and desist order, a regional board or the state board shall make such request only after a hearing, with due notice of the hearing given to all affected persons.

Central Coast Water Board staff has gathered information and evidence that the staff asserts that since 2002, Greka has caused and/or permitted at least twenty four (24) unpermitted discharges of wastes to waters of the State and/or waters of the United States, including crude

oil, produced water and residuary products of petroleum. The staff asserts that Greka has caused or permitted dozens of additional unpermitted discharges of wastes, some of which, upon further investigation, also may be demonstrated to have reached waters of the State and/or waters of the United States. Information and evidence gathered by staff indicates that the sum of these 24 illicit discharges exceeds 180,000 gallons (or approximately 4,250 barrels), and that some of the discharges may have included hazardous materials.

Surface waters in the vicinity of the spill locations include, but are not limited to, Schumann Canyon Creek, Bradley Canyon Creek, the Santa Maria River, Zaca Creek and a number of unnamed surface waters. Beneficial uses of these surface waters include municipal and domestic water supply, recreation, and aquatic life. (See Central Coast Water Board's Water Quality Control Plan (the "Basin Plan"), Table 2-1.) The groundwater underlying many of the spill locations has beneficial uses including domestic and municipal supply, agricultural supply, and industrial supply. (See Basin Plan, Chapter 2, Section I.) In addition to other standards, State Water Resources Control Board Resolution No. 68-16 (Anti-degradation Policy) also applies to underlying groundwater.

The Central Coast Water Board need not and should not adjudicate all of the evidence and the ultimate merits of the alleged liability. That is the job of the superior court. The prosecution staff is asking the Board to make a determination that there is reasonable justification to refer this matter to the Attorney General.

Staff Analysis and Bases for Recommendation:

Judicial Enforcement Allows More Appropriate Maximum Civil Liability Limits

A court may impose much higher liability than the Water Board. Under CWC 13350 a court may impose maximum civil liability on a daily basis of up to \$15,000, or on a per gallon basis of up to \$20 per gallon. In an administrative Water Board proceeding under CWC 13350, this Board may only impose a maximum civil liability on a daily basis of up to \$5,000, or on a per gallon basis of a mere \$10 per gallon. Similarly, under CWC 13385, a court could impose a maximum civil liability of \$25,000 per day of violation and \$25 per gallon for every gallon over 1,000 that is not cleaned up, whereas this Board would be limited to a maximum civil liability of \$10,000 per day of violation and \$10 per gallon for every gallon over 1,000 that is not cleaned up.

Because of Greka's long history of illicit discharges of waste throughout the entire tenure of its operations in the Central Coast Region, and because of its consistent and repetitive failure to take the necessary actions to prevent those discharges, staff believes a higher civil liability than could be imposed administratively by the Water Board is warranted in this case. Attached hereto as Exhibit A is a true and correct copy of a chart prepared by staff summarizing Greka's known illicit discharges since 2002. Backup information and evidence to support the chart is in the Water Board files and available upon request. In many cases, staff cites Santa Barbara County Fire Department Incident Reports to support its summary of a particular discharge. Staff asserts that Exhibit A demonstrates that Greka has caused and/or permitted the discharge of oil and/or residuary products of petroleum on and/or in waters of the state. Since 2007 alone, Greka has experienced at least seven separate, documented discharges of wastes to waters of the State, cumulatively totaling thousands of barrels of wastes.

The State Water Resources Control Board's Enforcement Policy seeks to establish both specific and general deterrence. For Greka, which is a multi-million dollar corporation, staff

believes the availability of a potentially higher civil liability is needed to specifically deter it from continuing to cause illicit discharges and to encourage it to take the necessary steps and incur the necessary expenses to prevent future spills. Additionally, staff believes a higher civil liability than this Water Board can impose will send the appropriate message to compliant dischargers that those who do not maintain environmental compliance will not gain a competitive economic advantage.

Judicial Enforcement Allows Better Opportunity For Inter-Agency Coordination

In addition to the Water Board, staff is aware of at least five other federal, state and local government agencies with potential jurisdiction to pursue enforcement actions relating to some or all of the same illicit discharges the Water Board staff seeks to pursue against Greka. These include the United States Environmental Protection Agency, the California Department of Conservation, the California Department of Fish and Game, the Santa Barbara County Petroleum Office, and the Santa Barbara County Fire Department. CWC section 13350(j) states, in relevant part, that remedies available to the Water Board are “in addition to, and do not supersede or limit, any and all other remedies, civil or criminal[.]” In the event any of these government agencies wants to pursue some type of enforcement action available to it relating to Greka’s illicit discharges of wastes, the California Attorney General’s Office is better suited to coordinate efforts by and among government agencies, and to help assure that Greka has a full and fair opportunity to defend itself in a single proceeding.

The Complex Factual And Legal Issues Presented By This Matter Are Better Suited To Judicial Resolution

Staff believes that a number of complex factual and legal issues make the matter of Greka’s illicit discharges more suited to judicial resolution. For example, expert testimony may be needed to determine whether certain discharges were of hazardous materials, to make jurisdictional determinations with respect to waters of the state and/or waters of the United States, to delineate whether certain discharges reached or threatened to reach waters of the State, to establish the extent of toxicity of the various discharges, to establish the nature of the harm caused by the discharges, and to set the level of economic benefit Greka received through its non-compliance. It is anticipated that Greka will offer expert testimony on these topics, and the Water Board would be at a disadvantage if it could not retain its own experts, and if it could not question Greka’s experts at depositions prior to those experts testifying. The Attorney General’s office has the resources and expertise to meet the challenges and time commitment necessary to engage in resolving these and other issues that are likely to be the subject of expert testimony.

It is also anticipated that Greka will want to depose a number of current and former Water Board staff, consultants, and third-party witnesses prior to an adjudicatory proceeding on its alleged illicit discharges. Greka is also likely to propound document requests, interrogatories and other requests for written information from the Water Board. It would be appropriate for the Attorney General’s Office to attend depositions and to defend Water Board staff and to respond to formal written discovery, tasks it is well equipped to undertake as the State’s litigation counsel.

Finally, staff is aware of a number of lawsuits between Greka, its landlords, neighboring property owners and others that could implicate who is legally responsible for certain liabilities. The Attorney General’s Office is better suited to sort out the complex and changing legal relationships between Greka and these third parties.

Alternatives:

The Water Board has options in this case. It can refer this matter to the Attorney General to pursue a judicial assessment of civil liability, it can direct Water Board staff to seek appropriate administrative enforcement action, such as issuing a complaint for administrative civil liability, or it can opt to take no action. Under the first option, a court would assess civil liability. Under the second option, the Water Board would decide the appropriate civil liability for the alleged violations.

Conclusion:

Prosecution staff asserts that ample evidence of violations exists to subject Greka to an enforcement proceeding under CWC sections 13350 and 13385. Because of the complexity of this case as described in this staff report, a judicial assessment of liability is most appropriate. Staff recommends that the Water Board refer this matter to the California Attorney General's Office.

ATTACHMENTS

1. Resolution No. R3-2009-0054 – Referral of Formal Civil Enforcement to the California Attorney General, Greka Oil & Gas, Inc.
2. Exhibit A – Known Spills of Crude Oil, Produced Water and Residuary Products of Petroleum Discharged to Waters of the State and/or Waters of the United States from 2002 – 2008 by Greka Oil & Gas, Inc.

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