

**Supplemental**  
ENFORCEMENT SUMMARY REPORT  
December 12, 2007

ITEM: 14

SUBJECT: PUBLIC HEARING: Administrative Assessment of Civil Liability against Ashby USA, LLC for violation of its Clean Water Act Section 401 Water Quality Certification for the Roripaugh Ranch Residential Development, Temecula, California. The Regional Board will consider whether to accept, modify, or reject assessment of \$546,250 civil liability recommended in Complaint No. R9-2007-0064. (Tentative Order No. R9-2007-0221) (Rebecca Stewart)

DISCUSSION: The Regional Board's enforcement team has reviewed Ashby USA, LLC's (Ashby) response to Complaint No. R9-2007-0064 and have determined that two adjustments to the liability amount in the Complaint should be made.

First, Ashby has provided adequate information to support the reduction in the number of days of violation associated with Allegation No. 1 in Complaint No. R9-2007-0064 – the disturbances to Long Valley Wash. The number of days of violation should be reduced from 202 to 93 days and the per day assessment reduced from \$550 to \$327. This will reduce the proposed penalty for this violation from \$111,100 to \$30,411.

Secondly, Ashby has provided information that supports reducing the number of days of violation for Allegation No. 4 - the failure to design a detention basin implementing post-construction best management practices, from 94 to 32 days. This will reduce the proposed penalty for this violation from \$47,000 to \$16,000.

An analysis of the information submitted by Ashby in response to Complaint No. R9-2007-0064 is contained in Supporting Document No. 5.

On December 5, 2007 Ashby submitted a settlement offer to the Regional Board (Supporting Document No. 6). The Regional Board's enforcement team found the offer was not acceptable. Ashby has requested that the offer be included in the late mailing to the Regional Board members for their review.

Also contained in this package is tentative Administrative Civil Liability Order No. R9-2007-0221 (Supporting Document No. 7). The tentative Order reflects the recommendations noted above and discussed in the Enforcement team's response to Ashby's November 8, 2007 submittal which was provided in the first mailing as Supporting Document No. 4. The tentative Order reflects a proposed civil liability of \$434,561 which is 4% of the total maximum liability of \$10,220,000 that could be imposed for these violations.

The tentative Order also includes a provision that Ashby pay \$46,411 within 30 days of adoption of the Order and defer payment of the remaining amount of, \$388,150 until August 30, 2007 when additional financing becomes available to the discharger. Ashby has reported that the \$46,411 is the amount Ashby is able to pay at this time. Ashby has also reported they expect to receive substantial additional funding in the near future. This additional funding should be available to pay any deferred liability.

RECOMMENDATION:

The adoption of tentative Administrative Civil Liability Order No. R9-2007-0221 imposing liability in the amount of \$434,561 is recommended.

SUPPORTING

(5) Regional Board Response to Ashby November 8, 2007 Response to Complaint No. R9-2007-0064.

DOCUMENTS:

(6) Ashby December 5, 2007 Settlement Offer  
(7) Tentative ACL Order No. R9-2007-0221.

RECOMMENDATION:

The adoption of ACL Order No. R9-2007-0221.