

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

TENTATIVE

ORDER NO. R9-2007-0219
ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST
NORTH COUNTY TRANSIT DISTRICT
FOR
VIOLATIONS OF
STATE BOARD ORDER NO 99-08-DWQ

The California Regional Water Quality Board, San Diego Region (Regional Board), having held a public hearing on December 12, 2007, to hear evidence and comments on the allegations contained in Administrative Civil Liability (ACL) Complaint No. R9-2007-0093, dated August 31, 2007, and deliberating on the evidence presented at the public hearing and in the record, after determining the allegations contained in the Complaint to be true, and on the recommendation for administrative assessment of Civil Liability in the amount of \$160,000 finds as follows:

1. The State Water Resources Control Board (hereafter State Board) has issued statewide general waste discharge requirements for discharges of storm water runoff associated with construction activities involving disturbances of one acre of soil, or more. [*Order No. 99-08-DWQ, NPDES No. CAS000002.*]
2. North County Transit District (NCTD) owns and operates the Sprinter Rail located along a 22 mile rail corridor from Oceanside to Escondido in northern San Diego County. NCTD filed a Notice of Intent on August 7, 2004 for enrollment of the Sprinter Rail construction site (hereinafter site) under State Board Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System General Permit No. CAS 000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (Permit).*
3. NCTD failed to implement and maintain adequate Best Management Practices at the site in violation of Order No. 99-08-DWQ Special Provision C.2 and section A.1.c on at least two days: February 20; and March 21, 2007.
4. On February 19, and 20; and March 20 and 21, 2007, NCTD violated the requirements of Special Provisions C.2 and C.4 and sections A.11 and B.3 of Order No. 99-08-DWQ by inaccurately assessing the condition and effectiveness of implemented BMPs in a total of four inspection reports.

5. NCTD discharged sediment to a Municipal Separate Storm Sewer System (MS4) and navigable waters of the United States in the San Diego Region in violation of State Board Order No. 99-08-DWQ, Discharge Prohibition A.2. NCTD discharged sediment from the site on the following dates and locations:
 - A. On February 20, 2007:
 1. MS4 inlet east of Escondido Avenue in the City of Vista which discharges into Buena Vista Creek and downstream into Buena Vista lagoon.
 2. MS4 inlet at the Mar Vista storage yard in the City of Vista which discharges into Buena Vista Creek and downstream into Buena Vista lagoon.
 3. MS4 inlet at the Armorlite storage yard in the City of San Marcos which discharges into San Marcos Creek and downstream into Lake San Marcos.
 4. MS4 inlet, south of Barham Lane, west of Wilkinson Drive, within the City of San Marcos which discharges into San Marcos Creek and downstream into Lake San Marcos.
 5. MS4 inlet, south of Barham Lane, east of Wilkinson Drive, within the City of San Marcos which discharges into San Marcos Creek and downstream into Lake San Marcos.
 6. MS4 inlet, north of Barham Lane, south of the tracks, within the City of San Marcos which discharges into San Marcos Creek and downstream into Lake San Marcos.
 7. MS4 inlet, west of Shelley Drive, south of tracks, within the City of San Marcos which discharges into San Marcos Creek and downstream into Lake San Marcos.
 8. MS4 inlet, east of Shelley Drive, north of tracks, within the City of San Marcos which discharges into San Marcos Creek and downstream into Lake San Marcos.
 9. MS4 inlet, east of Shelley Drive, south of tracks, within the City of San Marcos which discharges into San Marcos Creek and downstream into Lake San Marcos.
 - B. On March 21, 2007:
 10. Construction activities next to Loma Alta Creek, near the El Camino Real bridge in the City of Oceanside discharged directly into Loma Alta Creek.
6. On August 31, 2007, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R9-2007-0093 to NCTD proposing imposition of \$160,000 in liability for the above violations.

7. Liability in the amount of \$160,000 is based on consideration of the factors prescribed in subdivision (e) of the Water Code section 13385 as applied to the allegations contained in Complaint No. R9-2007-0093. The liability is as follows:
 - a. \$10,000 per day for 2 days on which NCTD failed to implement and maintain adequate Best Management Practices at the site in violation of Order No. 99-08-DWQ Special Provision C.2 and section A.1.c for a total of \$20,000.
 - b. \$10,000 per inspection for 4 inspections on which NCTD failed to perform adequate inspections in violation of Special Provisions C.2 and C.4 and sections A.11 and B.3 of State Board Order No. 99-08-DWQ for a total of \$40,000.
 - c. \$10,000 per discharge for 10 discharges of sediment to the MS4 and navigable waters of the United States in the San Diego Region in violation of State Board Order No. 99-08-DWQ for a total of \$100,000.
8. On November 26, 2007, the Regional Board met with NCTD and engaged in efforts to negotiate a settlement of the Complaint. The Regional Board determined that an appropriate settlement of penalties for the alleged violations could not be reached and continued to prepare for the scheduled public hearing.
9. Consideration of the factors prescribed in California Water Code section 13385 (e) based upon information available to the Regional Board supports the assessment of civil liability in the amount of \$160,000.
10. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) in accordance with section 15521, Chapter 3, Title 14, California Code of Regulations.
11. The Regional Board incurred costs of \$31,995.12 to prosecute the enforcement action including: investigation, inspections, preparation of enforcement documents, communications with NCTD, and preparation of materials for public review and hearing.

IT IS HEREBY ORDERED that pursuant to section 13385 of the California Water Code, civil liability is imposed on North County Transit District in the amount of \$160,000.

Tentative ACL Order
No. R9-2007-0219
North County Transit District

December 12, 2007

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on December 12, 2007.

TENTATIVE
JOHN H. ROBERTUS
Executive Officer