

EXECUTIVE OFFICER SUMMARY REPORT  
October 10, 2007

ITEM: 8

SUBJECT: **PUBLIC HEARING:** Terra Vac, Body Beautiful Car Wash Remediation Dewatering: Administrative Assessment of Civil Liability containing Mandatory Minimum Penalties for reported violations of effluent limitations prescribed in Order No. 2000-90, NPDES No. CAG919001, General Waste Discharge Requirements for Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other Conveyance Systems Tributary Thereto. If the discharger elects to waive their right to a hearing, the Regional Board will consider comments received during the public review period and decide on an order accepting payment of the proposed liability and waiver of hearing. (Tentative Order No. R9-2007-0089) (*Rebecca Stewart*)

PURPOSE: The Regional Board will consider whether to adopt an Order assessing administrative civil liability for Mandatory Minimum Penalties contained in tentative Order No. R9-2007-0089.

PUBLIC NOTICE: On April 18, 2007 a notice was published in the San Diego Union-Tribune and on the Regional Board website soliciting public input on the proposed liability. The public comment period ended on May 18, 2007.

DISCUSSION: On January 25, 2007, the Executive Officer issued Complaint No. R9-2007-0019 (Supporting Document No. 3) for Administrative Civil Liability with Mandatory Minimum Penalties (MMP) in the amount of \$27,000 against Terra Vac for violations of effluent limitations contained in Order No. 2000-90, NPDES No. CAG919001, General Waste Discharge Requirements for Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other Conveyance Systems Tributary Thereto. Terra Vac discharged treated effluent to San Diego Bay resulting from a groundwater cleanup project at Body Beautiful Car Wash located on Pacific Highway in San Diego. The average discharge rate during the period

addressed in the Complaint was less than 100,000 gallons per month. The reported effluent limitation violations included six total suspended solids violations that occurred between October 25, 2005 and February 22, 2006, one tributyltin violation that occurred on August 24, 2006, and five nickel violations that occurred between June 29, 2006 and November 16, 2006.

California Water Code section 13385(h) defines seven of the violations as serious violations, which are each subject to the assessment of a MMP of \$3,000. According to Water Code section 13385(i), two of the remaining violations, which are not serious violations, are also subject to the assessment of an MMP of \$3,000, because each are the fourth or more violation within a six month period.

On June 6, 2007, Terra Vac submitted numerous defenses to the alleged violations in the Complaint (Supporting Document No. 5). Based on the information submitted in defense, Regional Board staff does not concur with Terra Vac's conclusion that the penalty should be reduced. However, just days prior to the scheduled June 13, 2007 public hearing, Mr. James Malot, Principle Engineer, Terra Vac, indicated that Terra Vac could not afford to pay the proposed MMP and at the same time pay the employees that work at the Body Beautiful Car Wash Remediation site. Based on Mr. Malot's claim of an inability to pay the liability amount, the public hearing was postponed in order for the Regional Board to allow Terra Vac additional time to submit documentation to support its inability to pay the liability claim.

On June 21, 2007 the Regional Board sent Terra Vac a letter identifying the documentation necessary to evaluate an inability to pay (Supporting Document No. 6). The letter required submittal of specific financial documents by July 13, 2007 in order to provide an economist at the State Board adequate time for review and comment prior to a September 13, 2007 public hearing. Financial documentation was not submitted by Terra Vac until August 29, 2007. The confidential documentation has been provided to the Regional Board as part of this agenda package but under separate cover (Supporting Document No. 7). The documents have been transmitted to the State Board for review. At this time their evaluation has not been completed.

An August 9, 2007 Regional Board inspection of the Body Beautiful Car Wash Remediation site revealed that Terra Vac has removed its groundwater treatment equipment and is no longer operating at the site. Terra Vac has since submitted a request to terminate its enrollment to discharge under Order No. 2000-90.

#### **Status of Reported Nickel Violations**

Information submitted by Terra Vac in subsequent monitoring reports (Supporting Document No. 4) documents that an improper laboratory method was used to analyze the nickel concentration in the effluent samples during the violation period and, therefore, are not representative of dissolved nickel in the wastewater discharged from the facility. Apparently, the contract laboratory used by Terra Vac was not filtering the samples prior to analysis as directed by Order No. 2000-96. When proper protocol was used, the measured concentration for dissolved nickel was reduced to non-detectable levels. Based on this new information of false positive readings, Regional Board staff recommends that the five nickel violations be removed from consideration for MMP from Complaint No. R9-2007-0019.

The resulting penalty, after removal of the five nickel violations, would reduce the MMP to \$12,000 reflecting that the total suspended solids and tributyltin violations would remain.

#### **Status of Report Total Suspended Solids Violations**

Terra Vac has verbally claimed that the violations of total suspended solids limitations are exempt from MMP under the third party defense (pursuant to Water Code section 13385(j)).

Terra Vac argues that a delay by the State Water Resources Control Board reimbursement program to approve a change in the on-site treatment system process caused Terra Vac no choice but to continue discharging effluent with total suspended solids violations, thus triggering the MMP. The Regional Board's position is that a third party defense is not appropriate in this instance because Terra Vac could have taken other actions, such as rerouting the discharge to the sanitary sewer or temporarily terminating the discharge, thus

avoiding violations of the effluent limitations until other treatment options could be installed.

No additional information has been received to warrant the removal of any additional reported violations from the applicability of MMP.

KEY ISSUE:

The Regional Board may need to make a determination as to whether Terra Vac's claim of an inability to pay warrants the payment of the MMP in installments.

LEGAL CONCERNS:

None.

SUPPORTING  
DOCUMENTS:

1. Location Map
2. Tentative ACL Order No. R9-2007-0089
3. Administrative Civil Liability Complaint No. R9-2007-0019, dated January 25, 2007
4. April 4, 2007 Nickellaboratory data
5. June 6, 2007 Terra Vac Letter
6. July 21, 2007 Regional Board letter regarding inability to pay
7. **Confidential financial documents provided under separate cover.**

RECOMMENDATION:

The adoption of tentative Order No. R9-2007-0089 imposing a total of \$12,000 in liability is recommended.