

State of California
Regional Water Quality Control Board
San Diego Region

ENFORCEMENT SUMMARY REPORT
July 1, 2009

ITEM: 7

SUBJECT: Administrative Assessment of Civil Liability, South Orange County Wastewater Authority, the South Coast Water District Groundwater Recovery Facility. The Regional Board will consider adoption of a tentative Order that would impose a \$204,000 mandatory minimum penalty recommended in Complaint No. R9-2009-0028 for violations of Order No. R9-2006-0054, NPDES No. CA0107417, Waste Discharge Requirements for the South Orange County Wastewater Authority, Discharge to the Pacific Ocean Via the San Juan Creek Ocean Outfall, Orange County. (Tentative Order R9-2009-0048 (Jeremy Haas)

PURPOSE: The Regional Board conducted and closed a hearing on this item on May 13, 2009. The purpose of today's item is for the Regional Board to consider legal summary briefs submitted, as directed by the Board, by the prosecution staff and the Discharger. The Board may approve, modify, or reject assessment of the recommended penalty. The Regional Board may also consider the Discharger's proposal for directing a portion of imposed liability toward supplemental environmental projects. The public comment period is closed. No testimony will be received at the July 1, 2009 meeting.

PUBLIC NOTICE: On June 15, 2009 notice of this item was posted on the Regional Board website and distributed to known interested parties. On February 27, 2009, ACL Complaint No. R9-2009-0028 and its supporting documents were posted on the Regional Board website and distributed to known interested parties. The Regional Board published notice of the May 13, 2009 hearing on its website on April 4, 2009 and in the Orange County Register newspaper on April 10, 2009.

DISCUSSION:

On May 13, 2009, the Regional Board conducted a public hearing on allegations and a recommended assessment of mandatory minimum penalties in ACL Complaint No. R9-2009-0028. The Regional Board received and considered testimony and then closed the hearing. The Board considered a number of motions. The Board then directed the prosecution staff and the Discharger to each submit a summary 10-page legal brief by June 12, 2009 based on the evidence in the record.

Revised Tentative Order No. R9-2009-0048 (Supporting Document No. 1) imposes the \$204,000 mandatory minimum penalty and direct \$109,500 of the penalty to a supplemental environmental project to fund a study by the Southern California Coastal Waters Research Project known as the "Bight '08 Rocky Reef Study." Minor edits have been made to the revised tentative Order to reflect a tentative adoption date of July 1, 2009.

Today, the Regional Board will consider the briefs submitted by the prosecution staff and Discharger (Supporting Documents No. 2 and 3, respectively), may continue its deliberation on the matter, and may take an action.

NPDES Permit Background

The South Coast Water District (SCWD) operates the Groundwater Recovery Facility, which treats low-quality groundwater to produce potable water and generates brine waste. SCWD is a member agency of the South Orange County Wastewater Authority (SOCWA).

On August 16, 2006, the Regional Board adopted NPDES Order No. R9-2006-0054, which established effluent limitations for the discharge of brine from the facility into the San Juan Creek Ocean Outfall for disposal into the Pacific Ocean. The NPDES permit was issued to SOCWA because it owns and holds the NPDES permit for the San Juan Creek Ocean Outfall on behalf of all its member agencies.

The NPDES Permit established technology-based effluent limitations for the brine from the Groundwater Recovery Facility based upon Table A of the 2005 California Ocean Plan. Effluent limitations for discharges from the Recovery Facility were established for total suspended solids, turbidity, pH, oil and grease, and settleable solids. The point of

compliance with the effluent limitations is the discharge from the Recovery Facility prior to mixing with other flows in the Ocean Outfall.

The adoption of the NPDES Permit by the Regional Board was not petitioned by the Discharger to the State Board for review within the required 30-day time period. The Permit and all its requirements became effective on October 1, 2006.

ACL Complaint No. R9-2009-0028

On February 27, 2009, the Assistant Executive Officer of the Regional Board issued Administrative Civil Liability (ACL) Complaint No. R9-2009-0028 (Supporting Document 3) to SOCWA for alleged violations of effluent limitations established in NPDES Order R9-2006-0054. The alleged violations are all subject to mandatory minimum penalties (MMPs) pursuant to California Water Code section 13385(h) and (i).

As a result, the Complaint proposed that the Regional Board impose MMPs of two hundred four thousand dollars (\$204,000) for sixty eight alleged violations of total suspended solids, settleable solids, and turbidity effluent limitations that occurred from August 2007 through October 2008. Discretionary civil liability above the mandatory minimum of \$204,000 for the violations alleged in the Complaint was not recommended.

SOCWA has not refuted the alleged violations. However, on March 25, 2009, SOCWA informed the prosecution team that it intended to exercise its right to a public hearing on the ACL Complaint.

At the May 13, 2009 hearing, SOCWA and SCWD argued the Regional Board had discretion to not issue the MMPs. Prosecution staff disagreed, noting that the statute requires MMPs be assessed and that none of the statutory exemptions apply in this case. The Regional Board closed the hearing and did not reach a decision on the Tentative Order. The Regional Board then directed that summary legal briefs based on the evidence in the record be provided to the Board for consideration at a later date.

A full record of the agenda material is available on the Regional Board web page for Item 12 on the May 13, 2009 at http://www.waterboards.ca.gov/sandiego/board_info/agendas/2009/may/may_09.shtml. Additional hard copies may be provided by contacting Lori Costa, Executive Assistant, prior to the Board meeting.

LEGAL CONCERNS: none

SUPPORTING DOCUMENTS:

1. Revised Tentative ACL Order No. R9-2009-0048
2. Prosecution Staff Post-Hearing Legal Brief
3. Discharger Post-Hearing Legal Brief

RECOMMENDATION: The adoption of Tentative Order R9-2009-0048 is recommended assessing a civil liability of \$204,000 against the South Orange County Wastewater Authority for the violations alleged in Complaint No. R9-2009-0028.