

State of California
Regional Water Quality Control Board
San Diego Region

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 raise, lower, or reject assessment of \$546,250 civil liability recommended in Complaint No. R9-2007-0064. (Tentative Order No. R9-2007-0221) (Rebecca Stewart)

PURPOSE: To hear testimony regarding the allegations in the Complaint and to consider whether to raise, lower, or reject assessment of the recommended civil liability.

PUBLIC NOTICE: On November 8, 2007, a public notice was published in the North County Times and the Riverside Press Enterprise. A notice was also published on the Regional Board's web site.

DISCUSSION: On July 31, 2007, the Regional Board issued Administrative Civil Liability (ACL) Complaint No. R9-2007-0064 to Ashby USA, LLC (Ashby) for failing to comply with several conditions of Water Quality Certification No. 01C-091. A public hearing was originally scheduled for October 10, 2008. Upon a request by Ashby, the public hearing was rescheduled to December 12, 2007.

The Complaint was issued for significant violations of the Water Quality Certification issued to Ashby pursuant to section 401 of the Clean Water Act issued on December 11, 2002. The Complaint recommends an administrative liability of \$546,250 for the following violations:

1. Impacts to Long Valley Wash in violation of Condition No. 10 of Water Quality Certification 01C-091 (202 days).
2. Failure to submit an adequate mitigation plan by December 20, 2005 (569 days and continuing).
3. Failure to implement mitigation for impacts to Santa Gertrudis Creek and Long Valley Wash by October 20, 2006 (265 days and continuing).
4. Failure to design a detention basin implementing post-construction best management practices (94 days).

On December 11, 2002, Ashby USA, LLC obtained a Regional Board Order for Technically-Conditioned¹ Certification, as part of its' development of the 800 acre Roripaugh Ranch Residential Development Project (File No. 01C-091), specifically for construction of the one bridge over Santa Gertrudis Creek and two bridges over Long Valley Wash would result in impacts to 3.38 acres of waters of the United States.

The violations alleged in the Complaint were observed during Regional Board inspections on August 29, 2006, November 16, 2006, and February 20, 2007.

The construction project is also regulated by the City of Temecula to ensure compliance with the statewide general stormwater construction permit.

Regional Board staff met with representatives of Ashby on several occasions after the Complaint was issued to discuss the allegations, clarify facts in the Complaint, and to explore possible settlement of the liability. The scheduled hearing date was extended to allow Ashby additional time to secure funding for completion of the entire construction project due to

¹ A technically conditioned water quality certification contains specific conditions required of the proposed project including the standard conditions required of all projects.

unexpected cash flow difficulties and to develop a comprehensive response to the ACL Complaint. On November 8, 2007 Ashby submitted its response to the Complaint. Regional Board analysis of the submittal and recommendations, if any, regarding the liability will be included in the second agenda mailing to the Board members.

LEGAL CONCERNS:

None have been identified.

SUPPORTING
DOCUMENTS:

- (1) Location Map
- (2) Complaint No. R9-2007-0064
- (3) Technical Analysis
- (4) Ashby USA, LLC response to Complaint No. R9-2007-0064, dated November 8, 2007

COMPLIANCE RECORD:

The Regional Board previously imposed liability on Ashby for violations of the statewide construction stormwater permit in 2003 for the very same Roripaugh Ranch Residential Development site. Because that was the first Complaint issued to Ashby, the Regional Board reduced the liability from \$84,500 recommended in the Complaint to \$51,000, which Ashby paid. The liability amount was deposited in the State Board's Cleanup and Abatement Account.

RECOMMENDATION:

A recommendation will be made after the complete review of Ashby's response to the Complaint.