

ENFORCEMENT SUMMARY REPORT
June 11, 2008

ITEM: 8

SUBJECT: **PUBLIC HEARING:** Administrative Assessment of Civil Liability against North County Transit District, for violations of the Statewide General Construction Storm Water Permit at the Sprinter Rail Project. The Regional Board will consider whether to approve, raise, lower, or reject assessment of \$685,000 in civil liability as recommended in Complaint No. R9-2008-0021. The written comment period on the allegations contained in the Complaint closed on Wednesday, May 21, 2008. (Tentative Order No. R9-2008-0068) (*Frank Melbourne*)

PURPOSE: The Regional Board will consider whether to approve, raise, lower, or reject assessment of \$685,000 in civil liability as recommended in Complaint No. R9-2008-0021.

PUBLIC NOTICE: On March 5, 2008, Complaint No. R9-2008-0021 (Supporting Document No. 3) and its supporting documents were posted on the Regional Board website and mailed to interested parties. On April 2, 2008, the Regional Board at the request of the North County Transit District (NCTD), postponed the hearing from May 14, 2008, to June 11, 2008 (Supporting Document No. 4). On May 13, 2008, the Regional Board published a notice of the public hearing in the San Diego Union-Tribune newspaper.

DISCUSSION: On March 4, 2008, the Regional Board issued a \$685,000 Administrative Civil Liability Complaint to NCTD for alleged violations of the statewide NPDES Construction Storm Water Permit, Order No. 99-08-DWQ during the construction of the Sprinter Rail Project connecting the Cities of Oceanside and Escondido. The Complaint alleges that between October 5, 2007, and January 25, 2008, NCTD discharged sediment laden storm water runoff to waters of the United States including Clean Water Act section 303(d) sediment impaired water bodies at least 25 times, and failed to implement adequate erosion and sediment control Best Management Practices (BMPs) for a period of 112 days. A detailed

discussion of the requisite Water Code factors to be considered in determining the appropriate liability as well as complete documentation of the alleged violations and the evidence to support the allegations can be found in the attached Technical Report (Supporting Document No. 5).

This is not the first time that Regional Board staff has proposed the assessment of liability against NCTD (Supporting Document No. 6). On December 12, 2007, the Regional Board approved payment of a liability of \$160,000 for sediment discharges, inadequate BMPs, and inadequate site inspections during February and March 2007 at the Sprinter Rail Project (Supporting Document No. 7). The Regional Board issued Cleanup and Abatement Order No. R9-2007-0226 (Supporting Document No. 8) on December 31, 2007, to address the continued noncompliance observed during Regional Board site inspections since the issuance of the first ACL Complaint, R9-2007-0093, on August 31, 2007. Regional Board staff expended many hours assisting NCTD in efforts to gain compliance; however NCTD was unable to state that they were in compliance with the Construction Storm Water Permit until May 2, 2008, the second day of the dry season (Supporting Document No. 9).

Regional Board staff inspected the Sprinter Rail Project site 10 times over a 16 week period (See Supporting Document No. 4) covered by the Complaint. Due to rail safety concerns, Regional Board inspectors were often limited to viewing the site from public right of ways. Even with the limited access, Regional Board inspectors consistently discovered inadequate or missing BMPs. Multiple sediment discharges were also observed during storm events.

On May 21, 2008, the Regional Board received NCTD's response to the Complaint (Supporting Document No. 10). The Regional Board also received one public comment recommending that the assessment of liability be set at \$1.35 million against NCTD (Supporting Document No. 11).

LEGAL CONCERNS:

NCTD has raised legal issues in its response that will be addressed at the hearing by Regional Board Staff and Counsel.

**SUPPORTING
DOCUMENTS:**

1. Location Map
2. Tentative ACL Order No. R9-2008-0065
3. Complaint No. R9-2008-0021
4. Regional Board letter, April 2, 2008
5. Technical Report for Complaint No. R9-2008-0021
6. San Diego Union-Tribune article, September 29, 2007
7. ACL Order No. R9-2007-0219
8. Cleanup and Abatement Order No. R9-2007-0226
9. NCTD Certification of Substantial Compliance
10. NCTD Response to Complaint
11. Paul Cline Response to Complaint

RECOMMENDATION:

Adopt Tentative Order No. R9-2008-0068 assessing a civil liability of \$685,000 against the North County Transit District for the violations alleged in Complaint No. R9-2008-0021.