

EXECUTIVE OFFICER SUMMARY REPORT
December 16, 2009

ITEM: 12

SUBJECT: Reissuance of NPDES Waste Discharge Requirements for Discharges of Runoff from the Municipal Separate Storm Sewer Systems (MS4s) draining the watersheds of the County of Orange, the Orange County Flood Control District, and the incorporated Cities of Aliso Viejo, Dana Point, Laguna Beach, Laguna Hills, Laguna Niguel, Laguna Woods, Lake Forest, Mission Viejo, Rancho Santa Margarita, San Clemente, and San Juan Capistrano within the San Diego Region (South Orange County Municipal Storm Water Requirements) Tentative Order No. R9-2009-0002 (formerly Tentative Orders No. R9-2008-0001 and R9-2007-0002). At its meeting on November 18, 2009, the Regional Board closed the public hearing on this matter and will not accept new evidence or testimony. The Regional Board will only accept written and oral comments on the proposed revisions made to the Tentative Order following the November 18, 2009 meeting. Any such written comments must be submitted by 5 p.m. on December 8. (Ben Neill)

PURPOSE: The Regional Board will consider revisions to the Tentative Order that replace numeric effluent limitations for dry weather, non-storm water discharges with numeric action levels for these same discharges and that accelerate the monitoring requirements associated with the numeric action levels. The Regional Board will consider whether to adopt Tentative Order No. R9-2009-0002, with updates and errata.

PUBLIC NOTICE: Public noticing for the Tentative Order was described in the Executive Officer's Summary Report (EOSR) provided for Item 12 at the November 18, 2009 meeting. The agenda notice for the December 16, 2009, meeting satisfies additional public noticing requirements. At the November 18, 2009 meeting, the Regional Board closed the public hearing in this matter and will not accept new evidence or testimony. As noted in the agenda published for today's meeting the Regional Board will only accept written and oral

comments on revisions made to the Tentative Order following the November 18 meeting. A redline/strikeout version of the affected pages of the Tentative Order was posted on the Regional Board's website on December 2 and was sent to the Copermittees and distributed by email to the Copermittees and interested parties on December 2, 2009.

DISCUSSION:

This EOSR supplements the EOSR provided for Item 12 at the November 18, 2009 meeting. At that meeting, the Regional Board heard extensive testimony on the Tentative Order, including concerns by some parties that exceedances of proposed numeric effluent limitations for non-storm water discharges will subject Copermittees to mandatory minimum penalties. The Regional Board closed the public hearing and directed staff to prepare revisions to the Tentative Order that replace numeric effluent limitations with action levels for dry weather non-storm water discharges and that accelerate required monitoring for numeric action levels so that it begins one year after adoption of the Order. At the November 18, 2009 meeting, the Copermittees presented proposed errata to the Board. These errata have been carefully reviewed and incorporated to the extent appropriate in the draft updates and errata for the Tentative Order (Supporting Document No. 1). The proposed changes eliminate the possibility of imposition of mandatory minimum penalties (MMPs) that existed with the previously proposed non-storm water effluent limitations but establish numeric action levels that, when exceeded, require the Copermittees to take affirmative steps to implement and comply with the Clean Water Act requirement to effectively prohibit the discharge of unauthorized non-storm water into the MS4s.

LEGAL CONCERNS:

None.

SUPPORTING DOCUMENTS:

1. Draft Updates and Errata for the revised Tentative Order

RECOMMENDATION:

Staff recommends that the Regional Board adopts the Tentative Order with updates and errata.