

State of California
Regional Water Quality Control Board
San Diego Region

SUPPLEMENTAL
ENFORCEMENT SUMMARY REPORT
May 13, 2009

ITEM: 12

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 R9-2008-0028 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 will conduct a hearing and 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.

DISCUSSION: Revised Tentative Order for Proposed Supplemental Environmental Project

In the event that the Regional Board imposes the recommended liability of \$204,000 or more, the SOCWA has proposed two supplemental environmental projects (SEPs). The SEPs are titled: 1) "Aliso Creek Runoff Recovery and Reuse Project;" and 2) "Bight '08 Rocky Reef Study." Copies of both SEP proposals were provided in the first agenda package as Exhibits F and G, respectively, in Supporting Document No. 5.

A revised Tentative Order is attached, as Supporting Document No. 6, to provide for the funding from part of assessed liability one of the SEPs proposed by SOCWA. The prosecution staff supports the SEP that would direct \$109,500 of the penalty to fund a study by the Southern California Coastal Waters Research Project (SCCWRP) known as the "Bight '08 Rocky Reef Study."

The prosecution staff recommends rejecting the SEP proposal known as “Aliso Creek Runoff Recovery and Reuse Project.” The viability of that project is less certain than the SCCWRP study. Also, the Aliso Creek SEP is sponsored by the South Coast Water District, which is the entity that owns and operates the Groundwater Recovery Facility. Furthermore, there are no performance measures to support the stated goals to improve dry-weather Aliso Creek beach conditions and to enhance local water supplies. Finally, the success of the project appears to be dependent upon long-term continuation of dry-weather urban runoff discharges within the watershed. However, those types of discharges (e.g., over-irrigation) have been documented to adversely effect water quality and beneficial uses within the Aliso Creek watershed; therefore, this SEP could potentially conflict with efforts to decrease urban runoff discharges in the watershed. As a result, the Aliso Creek SEP proposal is not recommended for funding.

Summary of Discharger’s Arguments and Prosecution Staff Responses

Supporting Document No. 7 is a prosecution-staff summary of the arguments raised by SOCWA in its April 24, 2009 submittal. This summary also includes the prosecution staff’s summarized responses to SOCWA’s stated arguments. The prosecution staff concludes that none of the issues raised warrant reconsideration of the Board’s statutory requirement to assess the MMPs alleged in Complaint No. R9-2009-0028.

Evidentiary Objections

On May 4, 2009 the prosecution staff filed evidentiary objections and a motion to strike portions of SOWCA’s evidentiary submittal dated April 21, 2009 (Supporting Document No. 8). SOCWA’s opposition to the motion to strike is attached as Supporting Document No. 9.

LEGAL CONCERNS: None

SUPPORTING
DOCUMENTS:

6. Revised Tentative Order No. R9-2009-0048
7. Prosecution Staff Summary of SOCWA's Arguments
8. Prosecution Staff Evidentiary Objections and Motion to Strike
9. SOCWA's Opposition to Motion to Strike

RECOMMENDATION:

The adoption of Revised Tentative Order R9-2009-0048 is recommended assessing the South Orange County Wastewater Authority a \$204,000 civil liability for the violations alleged in Complaint No. R9-2009-0028 and suspending \$109,500 pending completion of the "Bight '08 rocky Reef Study" SEP by SCCWRP.