

ENFORCEMENT SUMMARY REPORT
August 13, 2014

- ITEM: 7.a and 7.b
- SUBJECT: Tentative Settlement Agreement and Time Schedule Order: The Board will consider a settlement agreement with the City of San Diego for failure to implement the Post-Construction BMPs requirements contained in Municipal Separate Storm Sewer System Permits 2001-01 and R9-2007-0001. The settlement agreement is comprised of two separate orders (*Chad Loflen*):
- a) Tentative Settlement Agreement and Stipulation for Entry of Order No. R9-2014-0017 and,
 - b) Tentative Time Schedule Order for City of San Diego Order No. R9-2014-0034.
- PURPOSE: **7.a** To consider adoption of Tentative Settlement Agreement and Stipulation for Order (Tentative Settlement Order) No. R9-2014-0017 (**Supporting Document No. 1**)
- 7.b** To consider adoption of Tentative Time Schedule Order (Tentative TSO) No. R9-2014-0034 (**Supporting Document No. 2**)
- RECOMMENDATION: The Prosecution Team recommends adoption of Tentative Order Nos. R9-2014-0017 and R9-2014-0034 (Tentative Orders) and asserts that the proposed resolution of the alleged violations is fair, reasonable, fulfills the San Diego Water Board's enforcement objectives, is in the best interest of the public, and that no further action is warranted concerning the alleged violations.
- The Advisory Team will be available to answer questions and to provide a recommendation to the San Diego Water Board.

KEY ISSUES:

Adoption of the Tentative Settlement Order will approve the terms of the settlement agreement to resolve past violations of Municipal Storm Water Order Nos. 2001-01 and R9-2007-0001 (MS4 Permits). Should the San Diego Water Board decide not to adopt the Tentative Settlement Order, the Prosecution Staff may either re-open settlement discussions with the City of San Diego (City) or proceed with a contested evidentiary hearing at a future meeting before the San Diego Water Board to determine if the Board will assess administrative civil liabilities against the City for the alleged resolved and unresolved violations.

Adoption of Tentative TSO No. R9-2014-0034 will provide a compliance schedule until August 15, 2016, for the City to bring all remaining non-compliant sites into compliance with the MS4 Permit requirements. If adopted, failure to comply with the TSO may result in an assessment of up to \$10,000 per day in penalties for each violation.

PRACTICAL VISION:

The San Diego Water Board serves as stewards of the public trust in protecting and restoring waters of the state. Enforcement is a critical ingredient in creating the deterrence needed to encourage the regulated community to anticipate, identify, and correct violations.

The proposed settlement illustrates a collaborative, outcome-focused process to effectively implement measures to anticipate and correct violations and to implement additional projects to restore harm done.

DISCUSSION:

The City owns and operates a municipal separate storm sewer system (MS4) comprised of roads, streets, gutters and approximately 50 miles of natural and concrete/earthen channels, detention basins, and storm drain outfalls that cover approximately 342.4 square-miles of metropolitan area through which it discharges urban runoff into waters of the United States and the state within the San Diego Region.

At the time that the alleged violations occurred, the City's MS4 system was regulated by the MS4 Permits, which require that the City take measures to reduce the discharge of pollutants in urban runoff to the maximum extent practicable (MEP), including implementation of a Standard Urban Stormwater Mitigation Plan (SUSMP). A SUSMP identifies site design best management practices (BMPs), source control BMPs, and permanent post-construction treatment control BMPs (TCBMPs) that apply to public and private new development and significant redevelopment projects.

Because the City failed to take measures to reduce the discharge of pollutants to the MEP and to implement its SUSMP, the San Diego Water Board issued Notice of Violation (NOV) No. R9-2010-0135 and Water Code Section 13267 Request for Technical Report on October 1, 2010, for 1) failure to implement the SUSMP requirements, 2) failure to enforce the MEP standard, and 3) failure to verify correct installation of TCBMPs.

The City's response and subsequent investigation into missing and ineffective TCBMPs found a total of 306 private projects and 13 public projects in violation of the MS4 Permits' Discharge Prohibitions and SUSMP requirements.

In December 2012 the City and the San Diego Water Board Prosecution Team (Parties) entered into settlement discussions to resolve all past and ongoing alleged violations of the MS4 Permit requirements. The Parties came to a tentative agreement as summarized below:

7.a Tentative Settlement Order No. R9-2014-0017

To resolve the past alleged violations of the MS4 Permits, without formal administrative proceedings, the Parties have agreed to the final imposition of \$949,634 in liability against the City pursuant to Government Code section 11415.60 and the Water Quality Enforcement Policy (Enforcement Policy).

In accordance with the Enforcement Policy, the Parties have agreed that \$456,900 of the total liability will be suspended upon completion of an Enhanced Compliance Action (ECA), consisting of retrofitting existing stormwater TCBMPs at five of the City's currently non-compliant sites to a more effective treatment type than what is required for compliance, and building a new TCBMP feature at a sixth City facility. The ECA, described further in Attachment B of Order No. R9-2014-0017, is estimated to cost \$1,454,120.

The City shall pay the remaining \$492,734 to the State Water Resources Control Board Cleanup and Abatement Account, consisting of approximately \$35,834 in staff costs and the balance in stipulated penalties, no later than 30 days following the San Diego Water Board's adoption of the Settlement Order.

The City is also in the process of implementing a number of improvements in its project review, inspection, and verification processes that will ensure that further violations of the City's SUSMP program requirements do not occur. Details of the City's programmatic improvements can be found in Attachment A of the Tentative Settlement Order.

7.b Tentative TSO No. R9-2014-0034

As of March 2014, there are 142 private projects and 8 public projects that remain out of compliance with MS4 Permit requirements due to missing or ineffective TCBMPs. The City has informed the San Diego Water Board that the remaining non-compliant sites require additional time to achieve compliance.

Tentative TSO No. R9-2014-0034 addresses the outstanding private and public projects identified that are still in violation of the MS4 Permits, including the continuing discharge of polluted runoff not treated to the MEP. The TSO prescribes a compliance schedule for the City to correct all identified public and private projects that continue to be out of compliance with MS4 Permit requirements. The City will have until August 15, 2016, to bring these sites into compliance.

LEGAL CONCERNS: None

SUPPORTING DOCUMENTS:

1. Tentative Settlement Order No. R9-2014-0017
2. Tentative Time Schedule Order No. R9-2014-0034

PUBLIC NOTICE: Notice of the proposed settlement, the San Diego Water Board's planned consideration of the Tentative Orders, the amount of the proposed settlement, details of the proposed ECA, and the opportunity for the public to comment was posted on the San Diego Water Board website on May 13, 2014. The public was provided 30 days to submit written comments to the San Diego Water Board. No comments were received.