

Executive Officer's Summary Report
9:00 a.m., July 23, 2009
Regional Water Board
5550 Skylane Blvd., Suite A
Santa Rosa, California

Item: 3

Subject: Public Hearing on Order No. R1-2009-0042 to consider whether to affirm, reject, or modify an Administrative Civil Liability Order for violation of Waste Discharge Requirements Order No. R1-2002-76 in the matter of **Fairhaven Power Plant....**

DISCUSSION

On August 21, 2008, the Regional Water Board Assistant Executive Officer issued ACL Complaint No. R1-2008-0104 for violations of Waste Discharge Requirements Order No. R1-2002-76 (NPDES Permit No. CA 0024571), WDID No. 1B8502RHUM for late submittal of six quarterly self-monitoring reports. The total proposed ACL for \$165,000 is the minimum penalty for the late reports mandated by the Water Code section 13385, subdivision (h).

In response to the Complaint, on September 23, 2008, DG Fairhaven Power, LLC (Discharger) waived its right to a public hearing and proposed to pay the sum of \$75,000 to the State Water Pollution Cleanup and Abatement Account (CAA) and to spend the remaining balance of \$90,000 on a Supplemental Environmental Project (SEP). On November 7, 2008, the Discharger paid \$75,000 into the CAA, and on November 18, 2008, it submitted a draft SEP proposal which staff subsequently denied, as it did not meet the General SEP Qualification Criteria. On February 27, 2009, the Discharger submitted a new draft SEP proposal for a project that will cost more than \$90,000. Staff determined that this new proposed project will meet the General SEP Qualification Criteria. Is now included it in the proposed ACLO for Regional Water Board consideration.

The proposed SEP will involve redirecting treated wastewater discharges from an ocean outfall to a land discharge location, converting approximately 6 acres of land into new wetlands, and improving approximately 4 acres of marginal wetlands. The wetlands will not be a part of the treatment process, but by discharging its effluent to this location, the Discharger will be able to establish and maintain a permanent open wetland area for wildlife and habitat preservation intended, in part, to demonstrate an innovative use of industrial treated wastewater. Local non-regulatory partners will participate in vegetation management, conduct wildlife and habitat viewings, and provide educational opportunities. Regional Water Board staff have reviewed the SEP proposal, and determined that the project is consistent with the guidelines contained in the Water Quality Enforcement Policy, and that the SEP will improve freshwater beneficial uses by

enhancing and creating area wetlands, and will improve ocean water quality by exchanging a direct effluent ocean discharge for an effluent discharge filtered and dissipated by wetlands. Staff recommend that the Board approve the proposed SEP. The SEP is projected to cost \$208,000, exceeding the outstanding \$90,000 balance.

The proposed order acknowledges the Discharger's payment of \$75,000 to the Cleanup and Abatement Account and contains a time schedule for the SEP. All work associated with the SEP will be completed by December 31, 2013. DG Fairhaven Power, LLC concurs with the time schedule contained in the proposed order.

A copy of the draft was mailed to DG Fairhaven Power, LLC and interested parties, and was posted on the Regional Water Board's website.

PRELIMINARY STAFF
RECOMMENDATION:

Adopt the Order as proposed.