

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
October 11, 2006

ITEM: 9

SUBJECT: **PUBLIC HEARING:** Request for Modification of Investigation Order No. R9-2006-0076, *Owners and Operators of Municipal Separate Storm Sewer Systems, California Department of Transportation, Hale Avenue Resource Recovery Facility, and North County Transit District Responsible for the Discharge of Bacteria, Nutrients, Sediment, and Total Dissolved Solids into Impaired Lagoons, Adjacent Beaches, and Agua Hedionda Creek.* (Wayne Chiu)

PURPOSE: To receive evidence relevant to determining whether Investigation Order No. R9-2006-0076 (Investigation Order) should be modified.

PUBLIC NOTICE: A Notice of Public Hearing was mailed to the Responsible Dischargers (Dischargers) named in the Investigation Order (Supporting Document 2) on September 11, 2006, 30 days in advance of the hearing. The Notice was mailed or emailed to interested persons on September 11, 2006, as indicated by the cc list in the cover letter for the hearing notice (Supporting Document 2). The Notice requested that written testimony be submitted for consideration no later than 5:00 p.m. on September 27, 2006. The Notice of the hearing was also included in the Agenda for the October 11, 2006 meeting of the San Diego Regional Board.

DISCUSSION: To provide data and information needed to develop total maximum daily loads for impairing pollutants in lagoons, adjacent beaches, and lower Agua Hedionda Creek, the San Diego Water Board issued Investigation Order No. R9-2006-0076 pursuant to Water Code sections 13267 and 13383. The Investigation Order (Supporting Document 3) was issued on July 19, 2006, along with a Technical Report (Supporting Document 4) supporting the findings and directives of the Investigation Order. The Dischargers named in the Investigation Order requested a public hearing (Supporting Document 5) for the purpose of providing testimony and evidence to the San Diego Water Board

relevant to determining whether the directives in the Investigation Order should be modified as described in the Key Issues in the Hearing Notice, and as listed in the Key Issues section below.

In general the Dischargers are concerned that the Investigation Order does not provide sufficient time to:

1. Negotiate and enter into formal agreements between multiple federal, State, and local agencies;
2. Obtain funding;
3. Competitively bid and award contract work; and
4. Submit and obtain review and approval of the Monitoring Program Workplans (Workplans) and Quality Assurance Project Plans (QAPPs).

The Dischargers have requested postponements of the due dates for submittal of the Workplans, QAPPs, and initiation of field activities described in the Workplans. These postponements would delay development and adoption of the TMDLs by one year, from 2009 to 2010.

With the exception of changing the due date for the Monitoring Program Workplans from August 1, 2007 to September 1, 2007, we do not agree with changing the due dates in the directives of the Investigation Order. The waterbodies addressed in the Investigation Order are listed as impaired for bacteria, nutrients/eutrophic conditions, sediment/siltation, and/or total dissolved solids on the 2002 Clean Water Act Section 303(d) List of Water Quality Limited Segments. The State is required by the federal Clean Water Act to move forward expeditiously with the development of TMDLs for the listed impaired waterbodies. Additionally, the coastal lagoons and estuaries of the San Diego Region are ecological, recreational, and aesthetical treasures. The lagoons support recreational uses, estuarine habitat, wildlife habitat, marine habitat, warm freshwater habitat, shellfish harvesting, and biological habitats of special significance necessary for the survival and well being of people, plants and wildlife. These uses of water serve to promote the economic, social and environmental goals of the people of this Region. Restoring the water quality needed to support these beneficial uses is one of the San Diego Water Board's highest priorities. Further delay of this already delayed project does not support the mission of the San Diego Water

Board.

The Dischargers were provided ample notification of the intentions of the San Diego Water Board to issue the Investigation Order. All of the Dischargers received notification of the Investigation Order by January 2006 at the latest and given a chance to review and comment. Furthermore, the Investigation Order gives the Dischargers approximately 12 to 14 months time to prepare the Workplans, QAPPs, and prepare to initiate the field activities contained in the Workplans (July 19, 2006 until August 1, September 1, and October 1, 2007, respectively). The schedule in the Investigation Order provides a reasonable balance between the public interest in moving forward expeditiously with completing the studies needed to develop TMDLs for the impaired waterbodies while at the same time taking into account the resources, both financial and technical, available to the Dischargers.

The Dischargers also requested that the directives for special studies needed in lagoons impaired for nutrients and eutrophic conditions be deleted. We disagree with this modification because the special studies are needed to provide the technical basis for the San Diego Water Board's development of numeric targets for the nutrient TMDLs.

The Dischargers are concerned that their substantial investment of time and money in this monitoring effort yield the data and information needed by the San Diego Water Board to develop the TMDLs. They would like the Investigation Order to include a process for ensuring that the directives of the Investigation Order result in attainment of the monitoring goals. The San Diego Water Board intends to work closely with the Dischargers as the Workplans are formulated. If the Dischargers and/or the San Diego Water Board identify the need for additional data, the Investigation Order can be amended to require the collection and inclusion of additional data in the monitoring program reports.

KEY ISSUES:

Should the San Diego Water Board amend Investigation Order No. R9-2006-0076 to:

1. Change the due date for the Monitoring Program Work Plan in the Investigation Order from August 1, 2007 to September 1, 2007 (Directive A1, first paragraph);
2. Require a process to ensure the adequacy of the Order's directives to meet the overall goal of the Investigation

Order which is to produce water quality data reports that characterize dry weather flow and storm flow influenced water quality in the water quality limited segments in order to complete development of TMDLs, and load and wasteload allocations and reductions, as described in the second paragraph of Directive A1;

3. Remove or modify the study questions and timeline associated with conducting the special studies (Directive A1.e,e1,e2 and e3 and Directive A8);
4. Change the October 1, 2007 through April 30, 2008 schedule for wet season monitoring to October 1, 2008 through April 30, 2009. Change the May 1, 2008 through September 30, 2008 schedule for dry season monitoring to May 1, 2009 through September 30, 2009 (Directives A2.iii and A3.iii);
5. Change the requirement for operation of a rain gage from October 1, 2007 to October 1, 2008 (Directive A6.iii);
6. Change the due date for the Quality Assurance Project Plan from September 1, 2007 to March 1, 2008 (Directive A9, first paragraph)?

LEGAL CONCERNS: None.

SUPPORTING
DOCUMENTS:

1. Map of impaired lagoons, adjacent beaches and Agua Hedionda Creek included in the Investigation Order and their watersheds.
2. Cover Letter and Notice of Public Hearing on Investigation Order No. R9-2006-0076, signed September 11, 2006.
3. Cover Letter and Investigation Order No. R9-2006-0076, dated July 19, 2006.
4. Technical Report for Investigation Order No. R9-2006-0076, dated July 19, 2006.
5. Request for Hearing on Investigation Order No. R9-2006-0076 and identification of key issues. Letter from County of San Diego and others, dated August 18, 2006, and email from County of San Diego, dated September 7, 2006.
6. Letter from Alexis Strauss, Director of the Water Division at the U.S. Environmental Protection Agency, Region 9 regarding the Investigation Order and maintaining TMDL due dates, dated September 18, 2006.
7. Written Testimony and Staff Recommendations on Key Issues for the Public Hearing on Investigation Order No. R9-2006-0076 Modification Request, dated September 27, 2006.

- RECOMMENDATION(S):
1. Direct the Executive Officer to amend Investigation Order to change the due date for the Monitoring Program Workplans from August 1, 2007, to September 1, 2007.
 2. Encourage the named Dischargers to work with San Diego Water Board and each other to ensure goals of Investigation Order are met.
 3. Do not remove or modify special studies in Investigation Order.
 4. Do not change due dates in Investigation Order.
 5. Do not change due dates in Investigation Order.
 6. Do not change due dates in Investigation Order.