

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
Wednesday, January 24, 2007

- ITEM: 11 (Time Certain Item: 10:30 AM)
- SUBJECT: Consideration of adoption of the San Diego County Municipal Storm Water Permit, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority (NPDES Permit No. CAS0108758). A public hearing for this item was held June 21, 2006: Oral comments will be accepted on modifications to the Tentative Order that have been made following the public hearing. Time allotted for oral comments may be limited at the discretion of the Regional Board. (**Tentative Order No. R9-2007-0001**, previously Tentative Order No. R9-2006-0011) (*Phil Hammer*)
- PURPOSE: To discuss and consider adoption of Tentative Order No. R9-2007-0001. Also, if appropriate, to receive limited oral comments on modifications made to the Tentative Order following the public hearing held June 21, 2006.
- PUBLIC NOTICE: A public hearing on the Tentative Order was held June 21, 2006. A revised Tentative Order, with supporting documents and a Notice of Availability, was issued to interested parties for comment on August 30, 2006. Notification of the issuance of the revised Tentative Order was also posted on the Regional Board's webpage on August 30, 2006 and in the San Diego Union Tribune on September 8, 2006. The notification indicated the Regional Board's intent to consider adoption of the Tentative Order at the December 13, 2006 Regional Board meeting. Upon cancellation of the December 13, 2006 Regional Board meeting, the Regional Board on December 15, 2006 officially issued a second revised Tentative

Order to interested parties for comment, though it was available with supporting documentation on the Regional Board website as early as December 4, 2006. Notification of the issuance of a second revised Tentative Order was also posted on the Regional Board's webpage on December 21, 2006 and in the San Diego Union Tribune on December 23, 2006. The notification indicated the Regional Board's intent to potentially modify the Tentative Order and consider its adoption at the January 24, 2007 Regional Board meeting.

DISCUSSION:

This Executive Officer Summary Report only addresses developments with Tentative Order No. R9-2007-0001 that have occurred since the cancellation of the December 13, 2006 Regional Board meeting. Please see the Executive Officer Summary Report and Supplemental Executive Officer Summary Report for the December 13, 2006 Regional Board meeting for all other information. The December 13, 2006 agenda material includes an overview of the process used to develop the Tentative Order, explains the supporting documentation for the Tentative Order, and identifies and discusses some key issues involved with the Tentative Order.

The cancellation of the December 13, 2006 Regional Board meeting provided the Regional Board with the opportunity to receive additional input on the Tentative Order from interested parties. Specifically, comments were solicited on those sections of the Tentative Order that included the most recent modifications made in response to comments received on October 30, 2006. Comments on those modifications had not previously been solicited.

The interested party comments received after the cancellation of the December 13, 2006 meeting are currently being reviewed and responses to significant comments are being formulated. While most written comments have already been received, some additional written comments are expected. Where the comments warrant further modifications to the Tentative Order, it is expected that modifications to the Tentative Order will be made. However, any such modifications are anticipated to be for the purpose of

clarifying and improving existing requirements, rather than for creating wholly new requirements.

Updated and current versions of the Tentative Order and Fact Sheet/Technical Report, as well as a third Responses to Comments document, will be provided with the Supplemental Executive Officer Summary Report prior to the January 24, 2007 Regional Board meeting.

KEY ISSUES:

Key issues as of December 13, 2006 are identified in the Executive Officer Summary Report for the December 13, 2006 Regional Board meeting. Since the key issues are likely to evolve during the continuing comment and response process, changes to the key issues resulting from comments and responses developed after the cancellation of the December 13, 2006 meeting will be discussed in the Supplemental Executive Officer Summary Report.

LEGAL CONCERNS:

Legal concerns are identified in the Executive Officer Summary Report for the December 13, 2006 Regional Board meeting.

SUPPORTING DOCUMENTS:

The primary new Supporting Documents will be provided with the Supplemental Executive Officer Summary Report. These will include (1) a new Tentative Order No. R9-2007-0001 dated January 24, 2007 (with the latest modifications indicated in underline-strikeout format), (2) a new Fact Sheet/Technical Report dated January 24, 2007, and (3) a Responses to Comments III document. These documents will address the most recent comments received on the Tentative Order following cancellation of the December 13, 2006 meeting.

In addition to these pending Supporting Documents, the following Supporting Documents are being provided here:

1. Written Comments from Copermittees and Interested Parties. The third round of comment letters received on the Tentative Order. These comments were solicited after the cancellation of the December 13, 2006 Regional Board meeting. Responses to the

comments are currently being developed. Comments still pending (as well as their responses) will be provided with the Supplemental Executive Officer Summary Report. Previous comment letters from earlier comment rounds have been provided with earlier Executive Officer Summary Reports. The second round of comment letters were provided with the agenda package for the canceled December 13, 2006 Regional Board meeting. The first round of comment letters were provided with the agenda package for the June 21, 2006 public hearing on the Tentative Order.

2. Newspaper Article and Email Notice. A recent newspaper article and email notice about the Tentative Order.

In addition to the two Supporting Documents listed above, the following Supporting Documents were provided to the Regional Board as part of the December 13, 2006 Regional Board meeting agenda package:

1. Tentative Order No. R9-2006-0011 dated December 13, 2006. Previously proposed renewal of Order No. 2001-01. This document was modified in response to the first two rounds of comments. This document will be superseded by the most recent version of the Tentative Order dated January 24, 2007, which will be provided with the Supplemental Executive Officer Summary Report.

2. Fact Sheet/Technical Report for Tentative Order No. R9-2006-0011 dated December 13, 2006. A previous version of the Fact Sheet/Technical Report, modified in response to the first two rounds of comments. This document will be superseded by the most recent version of the Fact Sheet/Technical Report dated January 24, 2007, which will be provided with the Supplemental Executive Officer Summary Report.

3. Responses to Comments II. A document responding to the second round of comments received on the Tentative Order.

4. Written Comments from Copermittees and Interested Parties. The second round of comment letters received on the Tentative Order. The first round of comment letters were provided with the Agenda package for the June 21, 2006 public hearing on the Tentative Order.
5. Tentative Order No. R9-2006-0011 dated August 30, 2006. Previously proposed renewal of Order No. 2001-01. This document was modified in response to the first round of comments. This document will be superseded by the most recent version of the Tentative Order dated January 24, 2007, which will be provided with the Supplemental Executive Officer Summary Report.
6. Responses to Comments. A document responding to the first round of comments received on the Tentative Order.
7. Key Issues Regarding Adoption of Tentative Order No. R9-2006-0011. A document discussing the key technical and legal issues regarding the Tentative Order as of December 13, 2006.
8. Discussion of Significant Modifications to the Directives of Order No. 2001-01 Found in Tentative Order No. R9-2006-0011. A document discussing the significant changes that have been made to the requirements of the current permit (Order No. 2001-01) in Tentative Order No. R9-2006-0011.
9. Executive Officer Summary Report dated June 21, 2006. The Executive Officer Summary Report for the June 21, 2006 public hearing on the Tentative Order. This document includes background information on the regulatory approach incorporated into the Tentative Order.
10. County of Los Angeles et al. v. California State Water Resources Control Board, et al. California Court of Appeal, Second Appellate District decision finding the Regional Board to be exempt from conducting California Environmental Quality Act review during adoption of National Pollutant

Discharge Elimination System permits. The pertinent discussion begins on page 22.

In addition to the above Supporting Documents, the Regional Board was provided with the following Supporting Documents with the Executive Officer Summary Report and Supplemental Executive Officer Report for the June 21, 2006 public hearing on the Tentative Order:

1. Tentative Order No. R9-2006-0011 dated March 10, 2006. The initially proposed renewal of Order No. 2001-01. Released for public review and comment on March 13, 2006. This document has been superseded by subsequent versions of the Tentative Order.
2. Fact Sheet/Technical Report for Tentative Order No. R9-2006-0011 dated March 10, 2006. The initial version of the Fact Sheet/Technical Report. This document has been superseded by subsequent versions of the Fact Sheet/Technical Report.
3. Summary of the Public Process for Reissuance of the San Diego County Municipal Storm Water Permit (Tentative Order No. R9-2006-0011). A document describing the public process undertaken in the development and reissuance of the Tentative Order. Key issues are also briefly discussed.
4. Summary of Modifications to the Directives of Order No. 2001-01 Found in Tentative Order No. R9-2006-0011. A document in table format summarizing the significant changes made to the directives of Order No. 2001-01, as found in the initial version of Tentative Order No. R9-2006-0011.
5. Regional Board Letter to Copermittees Responding to Their Preliminary Comments. A May 15, 2006 letter to the Copermittees responding to their preliminary comments raised at the first public workshop on the Tentative Order. The discussions included in this letter served as the basis for further discussions at the second public workshop.

6. Preliminary Responses to Questions on Tentative Order No. R9-2006-0011 from the Building Association of San Diego County. A document providing preliminary responses to questions raised by BIA at the first public workshop on the Tentative Order.

7. Regional Copermittee Comments on Tentative Order No. R9-2006-0011: 4/25/2006 – Priority Issues for April 26, 2006 Workshop. A table created by the Copermittees identifying their initial main issues with the Tentative Order.

8. County of San Diego Proposed Permit Language. A November 1, 2005 County of San Diego submittal which includes language proposed for use in the Tentative Order.

9. Written Comments from Copermittees. The first round of comment letters from the Copermittees on the Tentative Order.

10. Written Comments from All Other Interested Parties. The first round of comment letters from interested parties on the Tentative Order.

RECOMMENDATION(S): Adoption of Tentative Order No. R9-2007-0001 is recommended.