

EXECUTIVE OFFICER SUMMARY REPORT
June 13, 2007

ITEM: 13

SUBJECT: **PUBLIC HEARING:** Terra Vac, Body Beautiful Car Wash Remediation Dewatering: Administrative Assessment of Civil Liability containing Mandatory Minimum Penalties for reported violations of effluent limitations prescribed in Order No. 2000-90, NPDES No. CAG9190001, General Waste Discharge Requirements for Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other Conveyance Systems Tributary Thereto. If the discharger elects to waive their right to a hearing, the Regional Board will consider comments received during the public review period and decide on an order accepting payment of the proposed liability and waiver of hearing. (Tentative Order No. R9-2007-0089) (Rebecca Stewart)

PURPOSE: The Regional Board will consider whether to adopt an Order assessing administrative civil liability for Mandatory Minimum Penalties contained in tentative Order No. R9-2007-0089.

PUBLIC NOTICE: On April 18, 2007 a notice was published in the San Diego Union-Tribune and on the Regional Board website soliciting public input on the proposed liability. The public comment period ended on May 18, 2007.

DISCUSSION: On January 25, 2007, the Executive Officer issued Complaint No. R9-2007-0019 (Supporting Document No. 5) for Administrative Civil Liability with Mandatory Minimum Penalties (MMP) in the amount of \$27,000 against Terra Vac for violations of effluent limitations contained in Order No. 2000-90. Terra Vac discharges treated effluent to San Diego Bay resulting from a groundwater cleanup project at Body Beautiful Car Wash located on Pacific Highway, San Diego. The average discharge rate during the period addressed in the Complaint is less than 100,000 per month. The reported violations include six total suspended solids violations that occurred between October 25, 2005 and February 22, 2006, one tributyltin violation that occurred on

August 24, 2006, and five nickel violations that occurred between June 29, 2006 and November 16, 2006.

Seven of the violations are defined as serious violations¹, which are each subject to the assessment of an MMP of \$3,000 in accordance with California Water Code section (WCS) 13385(h). The remainder of the violations are not serious violations but were the fourth or more violations within a six month period, each of which are also subject to the assessment of an MMP of \$3,000 in accordance with WCS 13385(i).

In February 2007, the Regional Board, at the request of Terra Vac, approved a 60 day postponement of a hearing of this item which provided Terra Vac nearly 90 additional days, until May 18, 2007, to submit documents to the Regional Board and muster a defense in anticipation of a hearing.

By letter dated May 21, 2007 (Supporting Document No. 3) Mr. Malot of Terra Vac requested a second time extension, until after August 15, 2007. This request was denied by the Executive Officer because a hearing extension was previously granted and the reasons given by Terra Vac do not merit an extension. Nevertheless, Terra Vac may appeal to the Regional Board for another continuance at the Regional Board meeting.

Status of Reported Nickel Violations

Information submitted by Terra Vac in subsequent monitoring reports (Supporting Document No. 4) documents that an improper laboratory method was used to analyze the nickel concentration in the effluent samples during the violation period and, therefore, are not representative of dissolved nickel in the wastewater discharged from the facility. Apparently, Terra Vac's contract laboratory was not filtering the samples prior to analysis as directed by Order No. 2000-96. When proper protocol was used, the measured concentration for dissolved nickel was reduced to non-detectable levels. Based on this new information, Regional Board staff recommends that the nickel violations

¹ Pursuant to Water Code Section 13385 (h and i), A serious violation means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant by 40 percent or more.

be removed from consideration for MMP from Complaint No. R9-2007-0019.

After removal of the five nickel violations from consideration of MMP, four violations would remain, and thus reducing the MMP to \$12,000.

Status of Reported Total Suspended Solids Violations

Terra Vac has verbally claimed that the violations of total suspended solids limitations are exempt from MMP penalties under the third party defense (pursuant to CWS 13385(j)).

Terra Vac asserts this exemption because of a delay in getting approval for a change in the treatment process by the State Water Resources Control Board reimbursement program . Terra Vac claims the delay in reimbursement caused them to continue violating thus triggering the MMP. This third party defense is not appropriate because Terra Vac could have taken other actions, such as reroute the discharge to the sewer or terminate the discharge eliminating the discharge of effluent in excess of effluent limitations to San Diego Bay until other treatment options could be installed.

No additional information has been received to warrant the removal of any additional reported violations from the applicability of MMP.

KEY ISSUE: Documentation has been submitted to support the removal of five nickel violations from consideration, reducing the proposed penalty to \$12,000.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Location Map
2. Tentative Order No. R9-2007-0089
3. May 21, 2007 Terra Vac Letter
4. Nickel laboratory data
5. Administrative Civil Liability Complaint No. R9-2007-0019

RECOMMENDATION: The adoption of tentative Order No. R9-2007-0089 is recommended.